Docket for 04-79

(9)

No. 04-79
Title: Maria del Rosario Ortega, et al, Petitioners
v.
Star-Kist Foods, Inc.
Docketed: July 16, 2004
Lower Ct: United States Court of Appeals for the First Circuit
Case Nos.: (02-2530)
Decision Date: June 2, 2004
Questions Presented

~~Date~~	~~~~~~~~Proceedings and Orders~~~~~~~~~~~~~~~~~~~~~~~~
Jul 16 2004	Petition for a writ of certiorari filed. (Response due August 16, 2004)
Aug 11 2004	Order extending time to file response to petition to and including September 15, 2004.
Sep 15 2004	Memorandum of respondent Star-Kist Foods, Inc. in opposition filed.
Sep 21 2004	Reply of petitioners Maria del Rosario Ortega, et al filed.
Sep 22 2004	DISTRIBUTED for Conference of October 8, 2004.
Oct 12 2004	Petition GRANTED. The case is consolidated with No. 04-70 and a total of 90 minutes is allotted for oral argument.
Oct 22 2004	Extension of time within which to file the joint appendix and petitioner's brief on the merits to and including December 6, 2004 (VIDED).
Dec 6 2004	Joint appendix filed.
Dec 6 2004	Brief of petitioner Maria del Rosario Ortega, et al filed.
Dec 6 2004	Brief amicus curiae of United States filed.
Dec 15 2004	SET FOR ARGUMENT Tuesday, March 1, 2005.
Dec 15 2004	CIRCULATED.
Jan 3 2005	Motion for divided argument filed by the petitioner in No. 04-70 and the parties in No. 04-79. VIDED
Jan 6 2005	Extension of time within which to file respondents' brief on the merits to and including January 18, 2005.
Jan 10 2005	Motion for divided argument is granted to be divided as follows: 22 ½ minutes for petitioner in No. 04-70; 22 ½ minutes for respondent in No. 04-79; 22 ½ minutes for respondents in No. 04-70; and 22 ½ minutes for petitioners in 04-79. The request to argue the cases seriatim is denied.
Jan 11 2005	Record received from U.S.C.A. 1st Circuit. (1 small box).
Jan 18 2005	Motion of the Acting Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument filed. VIDED
Jan 18 2005	Brief of respondent Star-Kist Foods, Inc. filed. (Distributed)
Jan 19 2005	Opposition of Exxon Corporation and Star-Kist Foods to motion of the Acting Solicitor General filed. VIDED
Jan 21 2005	Record received from U.S.D.C. for Dist. of Puerto Rico. (1 box)
Feb 16 2005	Reply of petitioners Maria del Rosario Ortega, et al filed. (Distributed)
Feb 18 2005	Motion of the Acting Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument DENIED.

Supreme Court, U.S.
FILED

04 79 JUL 16 2004

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No.

IN THE

Supreme Court of the United States

MARIA DEL ROSARIO ORTEGA, SERGIO BLANCO, by themselves and representing minors BEATRIZ BLANCO-ORTEGA AND PATRIZIA BLANCO-ORTEGA,

Petitioners,

v.

STAR-KIST FOODS, INC.,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether, in a civil diversity action in which the claims of one plaintiff meet the amount-in-controversy threshold, 28 U.S.C. § 1367 authorizes the district courts to exercise supplemental jurisdiction over the related claims of additional plaintiffs who do not satisfy the amount-in-controversy requirement?

PARTIES TO THE PROCEEDING

The parties to the proceeding below are contained in the caption of this case.

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INTRODUCTION

With its decision in this case, the First Circuit became the ninth court of appeals to weigh in on the question whether, in a diversity action in which at least one plaintiff satisfies the amount-in-controversy requirement of 28 U.S.C. § 1332, Pet. App. 66a-67a, the supplemental jurisdiction statute, 28 U.S.C. § 1367, permits the district courts to exercise jurisdiction over the related claims of additional plaintiffs who do not independently satisfy the amount-in-controversy requirement. To date, five circuits have held that the statute authorizes the assertion of such pendent-party jurisdiction in diversity cases, while four circuits, including the First Circuit in this case, have held to the contrary. This Court itself has once attempted to answer the question, *see Free v. Abbott Labs., Inc.*, 528 U.S. 1018 (1999), but with one justice recused, the Court divided 4-4 and affirmed the lower-court decision without a precedential opinion. *See* 529 U.S. 333 (2000). As this question presents important issues with wide-ranging consequences across the civil justice system, the Court should again grant certiorari and resolve it.

As the First Circuit noted, the question presented actually arises in two similar but distinct contexts, and the circuits have split on both versions of the issue. First, there are cases, like this one, involving the ordinary joinder of additional plaintiffs under Rule 20 of the Federal Rules of Civil Procedure. Pet. App. 68a. Second, there are cases involving the claims of absent class members in diversity-only class actions. Prior to the enactment of § 1367, the rule in both contexts was the same: in diversity cases, multiple plaintiffs with separate claims were each required to satisfy the jurisdictional amount. *See Clark v. Paul Gray, Inc.*, 306 U.S. 583 (1939) (applying rule in multi-party non-class litigation raising federal question); *Zahn v. Int'l Paper Co.*, 414 U.S. 291 (1973) (extending *Clark* to Rule 23 class

actions). The question, put another way, is whether § 1367 abrogates those decisions.

OPINION AND JUDGMENT BELOW

The opinion of the court of appeals (Pet. App. 1a-45a) is reported at 370 F.3d 124. The opinion of the district court (Pet. App. 46a-64a) is reported at 213 F. Supp. 2d 84, and an order of the district court denying rehearing (Pet. App. 65a) is unreported.

JURISDICTION

The court of appeals entered judgment on June 2, 2004. Jurisdiction in this Court exists under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

This case involves § 1367 of Title 28, United States Code, which provides in pertinent part:

> (a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.
>
> (b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or

seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

This case also involves § 1332 of Title 28, United States Code, and Rule 20 of the Federal Rules of Civil Procedure, which are reproduced in Petitioners' Appendix at pages 66a-67a and 68a, respectively.

STATEMENT OF THE CASE

This is a diversity action involving personal injury claims brought by Beatriz Blanco-Ortega, a citizen of Puerto Rico,[1] and three of her family members, also citizens of Puerto Rico, against Star-Kist Foods, Inc., a company then

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[1] "The word 'States', as used in [the diversity-of-citizenship statute, 28 U.S.C. § 1332], includes . . . the Commonwealth of Puerto Rico." 28 U.S.C. § 1332(d).

incorporated, and having its principal place of business, in Pennsylvania.[2]

The case arises out of injuries suffered in 1999 when Beatriz, then nine years old, cut her pinky finger on a defective can of Star-Kist tuna while eating lunch at school. Beatriz's injuries ultimately led to surgery on her hand, the prospect of future surgery, and minor permanent disability and scarring.

In the amended complaint on which the case has gone forward, Beatriz, along with her mother, Maria del Rosario-Ortega, her father, Sergio Blanco, and her sister, Patrizia Blanco-Ortega, sued Star-Kist and its unnamed insurers. Beatriz alleged that she had suffered physical and emotional damages of not less than $900,000. In addition, each of Beatriz's family members sought emotional damages in excess of $75,000, with Ms. Ortega seeking an additional $30,000 in damages for past and future medical expenses.

Star-Kist moved for summary judgment on the ground that none of the plaintiffs had satisfied the $75,000 amount-in-controversy requirement needed to establish federal-court jurisdiction pursuant to § 1332. Applying the "legal certainty" test set forth by this Court in *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 288-89 (1938), and surveying recoveries in similar cases, the district court concluded that it was a legal certainty that none of the plaintiffs could prove damages in excess of $75,000. Accordingly, the district court dismissed the case for lack of subject-matter jurisdiction.

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[2] Since the court below found the claims of Beatriz to be within the jurisdiction created by 28 U.S.C. § 1332, the petitioners in this Court are her three family members who were co-plaintiffs in the district court — Maria del Rosario-Ortega, Sergio Blanco, and Patrizia Blanco-Ortega.

The plaintiffs appealed, and the First Circuit (Lynch, J.) affirmed in part and reversed in part. The court first unanimously reversed the district court on the question whether Beatriz had satisfied the amount-in-controversy requirement. The court concluded that, in light of Beatriz's permanent physical impairment and claimed pain and suffering, it could not say to a legal certainty that Beatriz could not recover a jury award larger than $75,000, and that Beatriz's claim should therefore be allowed to go forward. By contrast, the court concluded that it was a legal certainty that the emotional distress claims of Beatriz's family members (even taking into account Ms. Ortega's additional claim for medical expenses) did not meet the $75,000 threshold. Pet. App. 3a-10a.

Next, speaking on behalf of two judges, the court considered whether the supplemental jurisdiction statute, 28 U.S.C. § 1367, nevertheless permitted the district court to assert jurisdiction over the claims of Beatriz's family members. It noted that the proper resolution of this issue "is far from clear," and has deeply divided the circuit courts. It observed further that this issue has arisen in two contexts — cases, such as this one, involving the ordinary permissive joinder of multiple plaintiffs under Rule 20 of the Federal Rules of Civil Procedure, and cases involving the claims of absent class members in diversity-only class actions. Pet. App. 11a.

Confining its consideration to the first of these contexts, the court below began its analysis by reviewing the law as it existed before the enactment of § 1367 in 1990. It noted that the previously settled rule, commonly associated with *Clark v. Paul Gray, Inc.*, 306 U.S. 583 (1939), required that each plaintiff in a diversity action must separately satisfy the jurisdictional-amount requirement. The court noted further that the "impetus for Congress's adoption of § 1367 was the Supreme Court's 5-4 decision in *Finley v. United States*, 490 U.S. 545 (1989)," in which this Court had held that the

district courts lack jurisdiction over pendent-party state-law claims in federal-question cases. Pet. App. 14a. But while primarily aimed at overturning *Finley*, the court below observed, § 1367's text "can be read to do more than" that — indeed, on its face, § 1367 appears to be "a jurisdictional grant of such apparent breadth" as to have "created confusion in a number of areas in which principles were thought to be well established." Pet. App. 15a (quoting 13B Charles Alan Wright et al., *Federal Practice and Procedure* § 3567.2 (2d ed. 2003)).

The court stated that one such area of resulting confusion involves the continued validity of the Supreme Court's holdings that every plaintiff in a diversity case must meet the jurisdictional-amount requirement. Under one line of reasoning, adopted by the Seventh Circuit in *Stromberg Metal Works, Inc. v. Press Mechanical, Inc.*, 77 F.3d 928 (7th Cir. 1996), § 1367 has been found to overturn the jurisdictional amount holding of *Clark* in diversity cases because Congress failed in § 1367(b) "to include Rule 20 plaintiffs among those parties who cannot rely on supplemental jurisdiction where doing so would be inconsistent with § 1332." Pet. App. 15a. Under a second line of reasoning, which the court below ultimately adopted, *Clark* has been found to be preserved by "the requirement in § 1367(a) that the district court must first have 'original jurisdiction' over an action before supplemental jurisdiction can apply, . . . and thus [§ 1367] does not supply supplemental jurisdiction where, as in this case, only one of the named plaintiffs meets the amount in controversy." Pet. App. 16a (citing James E. Pfander, *Supplemental Jurisdiction and Section 1367: The Case for a Sympathetic Textualism*, 148 U. Pa. L. Rev. 109 (1999); *Leonhardt v. W. Sugar Co.*, 160 F.3d 631 (10th Cir. 1998); *Meritcare, Inc. v. St. Paul Mercury Ins. Co.*, 166 F.3d 214 (3d Cir. 1999)).

Applying this latter analysis to the facts of this case, the court reasoned that, because the district court lacked

jurisdiction over the claims of Beatriz's family members under the jurisdictional principles articulated in *Clark*, it lacked "original jurisdiction" over the entire action, and the statutory prerequisite for the exercise of supplemental jurisdiction was therefore not met.[3] While this interpretation of § 1367(a) obviated the need for the court to address the exceptions set forth in § 1367(b), the court noted that its interpretation provided an explanation for the omission of Rule 20 plaintiffs from those exceptions.

In support of its interpretation of the statutory language, the court opined that a contrary reading of the statute would necessarily permit the permissive joinder of non-diverse plaintiffs, thereby abrogating the complete-diversity rule of *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806), a "surprising and far-reaching consequence[]" that the court did not believe Congress intended. Finally, the court concluded that the legislative history of § 1367 supported the court's conclusion that Congress did not believe that the statute would make significant changes to the law of diversity jurisdiction.

Judge Torruella dissented from the portion of the court's ruling addressing supplemental jurisdiction, on the ground that it "is contrary to the plain language of § 1367." Pet. App. 33a. He began his analysis by noting that, while only two prior circuit courts had split on the question at hand in the Rule 20 joinder context, when class action cases are

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[3] The court noted that this reading of the "original jurisdiction" requirement in § 1367 is supported by "the settled meaning of identical language in 28 U.S.C. § 1441, the removal statute." Pet. App. 21a. There, the court asserted, the prerequisite to removal — that the action to be removed be one "of which the district courts . . . have original jurisdiction" — has been interpreted "to prohibit removal unless the entire action, as it stands at the time of removal, could have been filed in federal court in the first instance." Pet. App. 21a; *see infra* note 15.

considered, a total of five circuit courts had interpreted § 1367 to allow a plaintiff who does not independently meet the amount-in-controversy requirement to remain in federal court, while three other circuit courts had reached the opposite conclusion. Stating that "*Clark* and *Zahn* stand for the same principle," Judge Torruella suggested that the majority should have addressed the reasoning of the majority of class-action cases that came out the other way. He also asserted that if any distinction were to be drawn between the two situations with regard to the amount-in-controversy requirement, the Rule 20 joinder situation is the stronger one for allowing supplemental jurisdiction over additional plaintiffs who do not meet the jurisdictional amount requirement. Pet. App. 35a-36a.

Turning to the text of the statute, Judge Torruella explained that the district court had "original jurisdiction" over Beatriz's claim within the meaning of § 1367(a) because she and Star-Kist are diverse and her claim exceeds $75,000. Therefore, the district court also had supplemental jurisdiction over the related claims of Beatriz's family members unless one of the exceptions of § 1367(b) applied. While § 1367(b) excepts claims asserted by plaintiffs made parties pursuant to Rules 19 and 24 of the Federal Rules of Civil Procedure and *against* persons made parties pursuant to, *inter alia*, Rule 20, the claims in this case were being asserted by persons made parties pursuant to Rule 20 and, accordingly, none of the exceptions applied. Judge Torruella criticized the majority's alternative approach for misinterpreting the concept of original jurisdiction, making other provisions of § 1367 superfluous, and improperly relying on "internally contradictory" legislative history. Pet. App. 39a-45a.

REASONS FOR GRANTING THE WRIT

This case presents in the stark context of Rule 20 joinder the conundrum that this Court sought to resolve four years

ago in the class action context, *Free v. Abbott Labs., Inc.*, 529 U.S. 333 (2000) (affirming by equally divided Court): whether Congress's statutory grant of supplemental jurisdiction in 28 U.S.C. § 1367 extends in diversity actions to the claims of additional plaintiffs who fail to meet the amount-in-controversy requirement of 28 U.S.C. § 1332. This issue, in both of its factual contexts, has fomented clear splits among the federal courts of appeals, and has generated a remarkable and diverse body of commentary.

The issue at hand is a fundamental and frequently recurring one, with profound consequences to broaden or constrict the diversity jurisdiction of the federal courts. Ultimately at issue is the question whether federal courts sitting in diversity jurisdiction are to be a viable forum for the resolution of a very large category of disputes. For, in both the Rule 20 and class-action contexts, where some potential plaintiffs but not others can satisfy the amount-in-controversy requirement, the rule adopted by the court below would often render the federal forum non-viable by the resulting inability to resolve the entire dispute in a single proceeding.

The statutory construction issues presented by § 1367 in this Rule 20 joinder case are similar but not identical to those that arise in the class-action context. The language of § 1367 leads quite directly and unavoidably to the conclusion that diverse plaintiffs who lack the amount-in-controversy may be joined under Rule 20 pursuant to the supplemental jurisdiction. The textual analysis with regard to class-action plaintiffs under Rule 23 is similar, but somewhat less compelling in certain respects. There are also differences in the relevant legislative history. And it is at least conceivable that the Court might reach different conclusions applicable to the Rule 20 and class-action contexts. Thus the Court's consideration of the statute's proper construction would likely be enhanced by careful consideration of its application in both contexts.

Accordingly, petitioners submit that this case merits plenary review by this Court, either alone or in conjunction with a case presenting the parallel issue in the class action context.[4]

I. THE FEDERAL CIRCUITS ARE DEEPLY SPLIT ON THE APPLICATION OF § 1367 SUPPLEMENTAL JURISDICTION TO PLAINTIFFS IN A DIVERSITY ACTION WHO LACK THE AMOUNT-IN-CONTROVERSY

For the past fourteen years, the federal courts have wrestled with the problem of construing § 1367's grant of supplemental jurisdiction, and specifically with whether that 1990 statute altered the pre-existing law as announced in decisions of this Court requiring each plaintiff in a diversity case individually to satisfy the amount-in-controversy requirement of 28 U.S.C. § 1332. *See, e.g.*, *Zahn v. Int'l Paper Co.*, 414 U.S. 291, 294 (1973); *Clark v. Paul Gray, Inc.*, 306 U.S. 583 (1939) (amount-in-controversy requirement in multi-party federal question context).

This issue has arisen in two contexts, and the decisions of the circuit courts are sharply split in both. First, three circuits have addressed whether the district courts' supplemental jurisdiction extends to the claims of additional plaintiffs permissively joined pursuant to Rule 20 of the

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[4] Presently pending before the Court is a petition for certiorari by Exxon, from the decision of the Eleventh Circuit in *Allapattah Services, Inc. v. Exxon Corp.*, 333 F.3d 1248 (11th Cir. 2003), *reh'g denied*, 362 F.3d 739 (11th Cir. 2004) (petition for certiorari filed July 14, 2004). In that case, the Eleventh Circuit held that § 1367 authorizes the exercise of jurisdiction over unnamed class plaintiffs who do not meet the amount-in-controversy requirement. Given the important differences between the statutory analysis required in the Rule 20 and class action contexts, petitioners urge the Court to grant certiorari in this case, whether or not it also decides to grant review in *Allapattah*. *See infra* Part III.

Federal Rules of Civil Procedure, asking, in effect, whether § 1367 overrules *Clark v. Paul Gray, Inc.* The First and Third Circuits have concluded that § 1367 does not authorize supplemental jurisdiction under such circumstances and that *Clark* therefore remains good law. *See* Pet. App. 20a-24a; *Meritcare, Inc. v. St. Paul Mercury Ins. Co.*, 166 F.3d 214, 216 (3d Cir. 1999). The Seventh Circuit, by contrast, has concluded that § 1367 abrogates the rule of *Clark* and permits the exercise of supplemental jurisdiction over the claims of permissively joined plaintiffs who do not meet the amount-in-controversy requirement. *See Stromberg Metal Works, Inc. v. Press Mech., Inc.*, 77 F.3d 928, 932 (7th Cir. 1996).

Second, eight circuits have addressed the same issue in the Rule 23 class-action context. In this context, the Fourth, Fifth, Seventh, Ninth, and Eleventh Circuits have held that the statute abrogates *Zahn* and authorizes the district courts in diversity actions to exercise supplemental jurisdiction over the claims of class members who do not meet the amount-in-controversy requirement, provided that the named plaintiff does so. *See Allapattah Servs., Inc. v. Exxon Corp.*, 333 F.3d 1248, 1254 (11th Cir. 2003); *Gibson v. Chrysler Corp.*, 261 F.3d 927, 934 (9th Cir. 2001); *Rosmer v. Pfizer Inc.*, 263 F.3d 110, 114 (4th Cir. 2001); *In re Brand Name Prescription Drugs Antitrust Litig.*, 123 F.3d 599, 607 (7th Cir. 1997); *In re Abbott Labs.*, 51 F.3d 524, 528-29 (5th Cir. 1995). The Third, Eighth, and Tenth Circuits, by contrast, have concluded that § 1367 does not authorize the exercise of supplemental jurisdiction under such circumstances. *See Trimble v. Asarco, Inc.*, 232 F.3d 946, 962 (8th Cir. 2000); *Meritcare, Inc. v. St. Paul Mercury Ins. Co.*, 166 F.3d 214, 216 (3d Cir. 1999); *Leonhardt v. W. Sugar Co.*, 160 F.3d 631, 640 (10th Cir. 1998).

The academic commentators have given great attention to the issue of § 1367's proper construction, and they too are irreconcilably divided. Several of them urge the

interpretation advocated by petitioners.[5] Others acknowledge that the text of § 1367 is best read as petitioners urge, but nonetheless argue for an exceptional and less textually-grounded construction of the statute.[6] And one commentator, Professor Pfander, has divined a textually-based construction of the statute that yields the result reached by the court below.[7] All of the leading procedure treatises likewise acknowledge the debate — some taking sides;[8]

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[5] *See, e.g.*, Jeffrey L. Rensberger, *The Amount in Controversy: Understanding the Rules of Aggregation*, 26 Ariz. St. L.J. 925, 931-32 (1994) (§ 1367 abrogates previous jurisdictional requirements in multi-plaintiff diversity actions); Richard D. Freer, *The Cauldron Boils: Supplemental Jurisdiction, Amount in Controversy, and Diversity of Citizenship Class Actions*, 53 Emory L.J. 55, 60 (2004) (same); Michael B. Slade, Note, *Democracy in the Details: A Plea for Substance Over Form in Statutory Interpretation*, 37 Harv. J. on Legis. 187, 210 (2000) (same); Joel E. Tasca, Comment, *Judicial Interpretation of the Effect of the Supplemental Jurisdiction Statute on the Complete Amount in Controversy Rule: A Case for Plain Meaning Statutory Construction*, 46 Emory L.J. 435, 436–39 (1997) (same); Richard D. Freer, *Toward a Principled Statutory Approach to Supplemental Jurisdiction in Diversity of Citizenship Cases*, 74 Ind. L.J. 5, 5–6 (1998) (same)

[6] *See, e.g.*, Laura L. Hirshfeld, *The $50,000 Question: Does Supplemental Jurisdiction Extend to Claims Between Diverse Parties Which Do Not Meet § 1332's Amount-in-Controversy Requirement?*, 68 Temp. L. Rev. 107, 110–11 (1995) (§ 1367 does not abrogate amount-in-controversy requirement in multi-plaintiff diversity cases); Christopher M. Fairman, *Abdication to Academia: The Case of the Supplemental Jurisdiction Statute, 28 U.S.C. § 1367*, 19 Seton Hall Legis. J. 157, 192 (1994) (same); *and* Thomas D. Rowe, Jr. et al., *Compounding or Creating Confusion About Supplemental Jurisdiction? A Reply to Professor Freer*, 40 Emory L.J. 943, 961 n.91 (1991) (same).

[7] James E. Pfander, *Supplemental Jurisdiction and Section 1367: The Case for a Sympathetic Textualism*, 148 U. Pa. L. Rev. 109, 148 (1999); James E. Pfander, *The Simmering Debate Over Supplemental Jurisdiction*, 2002 U. Ill. L. Rev. 1209, 1231 (2002).

[8] *See, e.g.*, 16 James Wm. Moore *et al.*, *Moore's Federal Practice* ¶ 106.44 (3d ed.); 13 Charles Alan Wright *et al.*, *Federal Practice and*

others abstaining from the debate;[9] and still others being internally inconsistent on the issue.[10] The issue has been fully joined and ventilated, and it is ready for this Court's review.

II. THE QUESTION PRESENTED IS AN ISSUE OF SUBSTANTIAL RECURRING IMPORTANCE

It is hardly surprising that a total of nine courts of appeals (splitting 5-4) have addressed the question whether § 1367 extends supplemental jurisdiction in diversity actions to plaintiffs who do not satisfy the amount-in-controversy requirement. For that issue defines a critical boundary of the jurisdiction of the federal courts, which has broad practical consequences for the nature of the disputes that will be resolved there.

Under the decision below, federal courts are empowered to resolve controversies between diverse parties under state law, but only as to claimants asserting injury of at least $75,000. Other plaintiffs (whether diverse or not) with claims against the same defendant arising from the same

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Procedure § 3523.1, at 181 (Supp. 2004); Charles Alan Wright & Mary Kay Kane, *Law of Federal Courts* at 40, 217 & n.33 (6th ed. 2002).

[9] *See, e.g.*, Richard H. Fallon *et al.*, *Hart & Wechsler's The Federal Courts and the Federal System* 926–930, 1490–1493 (5th ed. 2003) (leaving open the question).

[10] *Compare* James Wm. Moore, *Moore's Federal Practice: Judicial Code Title 28 U.S.C.*, ¶ 1367.2[1] at 478 (Supp. 2004) (noting that § 1367(b) "precludes supplemental jurisdiction over claims asserted by plaintiffs if assertion of the claim would be inconsistent with the jurisdictional requirements of the statute, i.e., if the parties to the claim are not diverse, or the jurisdictional minimum is not present") *with id.* at 479 (noting the contradiction compelled by § 1367(b)'s language that appears to authorize supplemental jurisdiction when a joined plaintiff is a proper plaintiff under Rule 20 but not when the joined plaintiff is a necessary party under Rule 19).

transaction or occurrence, but falling below that amount, must pursue relief elsewhere. If the goal of § 1367 is to steer potential diversity cases away from federal court and back to the states — including major class action cases, which many believe most naturally belong in federal court — then the decision of the court below advances that goal by regularly preventing the federal court from dealing with the controversy at hand in its entirety. By contrast, if the goal of the statute is to provide an efficient federal forum for the resolution of the related claims of multiple plaintiffs, then the decision below frustrates this goal by preventing the federal courts from resolving all of the claims that may arise out of the same transaction or occurrence.

Given what is at stake, it is thus not surprising that the issue has been frequently litigated. The fact that the lower courts have been unable to resolve it, but rather have sharply split over the correct interpretation of § 1367, is a practical problem beyond the merits of the underlying question. The confusion generated by this issue has led to an uncommon number of collateral disputes over where, not how, a matter ought to be decided.

This lasting uncertainty regarding the impact of a single statute has prompted a regrettable expenditure of judicial and private resources. Litigation devoted solely to which court system has authority over a matter, as this Court has recognized, is far from desirable or efficient; in point of fact, "litigation over whether the case is in the right court is essentially a waste of time and resources." *Navarro Sav. Ass'n v. Lee*, 446 U.S. 458, 464 n.13 (1980); *see also Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 549 (1995) (Thomas, J., concurring in the judgment) (noting that a "clear, bright-line" jurisdictional rule "ensures that judges and litigants will not waste their resources in determining the extent of federal subject-matter jurisdiction"). Plaintiffs and defendants alike, to say nothing of district court judges, will benefit from a definitive

resolution of the issue and what comes with it — a clear allocation of judicial responsibility between state and federal courts.

III. THE QUESTION AS PRESENTED IN THE RULE 20 JOINDER CONTEXT IS SUFFICIENTLY DISTINCT AS TO MERIT SEPARATE PLENARY CONSIDERATION, PRIOR TO RESOLUTION OF THE ISSUE IN THE CLASS ACTION CONTEXT

Perhaps due to the increasing popularity of the class action device, the question whether § 1367 authorizes the exercise of pendent-party jurisdiction in diversity actions over the claims of additional plaintiffs who do not independently meet the amount-in-controversy requirement has received more judicial and academic attention in the class-action context. Yet there are compelling reasons for the Court to fully consider the question as it arises in the context of multi-party non-class litigation before it resolves the issue in the class-action context.[11]

As an analytical matter, resolution of the issue in the Rule 20 joinder context lends clarity to the analysis in the class-action analysis, which adds additional complexities not present in this case. *See, e.g., U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 787 (1995) ("Our resolution of these issues draws upon our prior resolution of a related but distinct issue . . . ."). While the issue is, in many respects, similar in both contexts, the Rule 23 context raises additional issues unique to class actions.

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[11] As noted above, another pending petition, *Exxon Corp. v. Allapattah Services, Inc.*, No. 04-____ (filed July 14, 2004), raises the related question whether § 1367 authorizes supplemental jurisdiction over the claims of Rule 23 plaintiff class members who fail to satisfy the amount-in-controversy requirement.

As pointed out in the petition for certiorari filed July 14, 2004 in *Exxon Corp. v. Allapattah Services, Inc.*, No. 04-____, at 15-16, one such issue arises at the very threshold, in determining whether there is a "civil action of which the district courts have original jurisdiction." In the Rule 20 context, when one plaintiff brings claims meeting the jurisdictional amount against diverse defendants, jurisdiction over that dispute exists under § 1332. It is entirely clear that the joinder of additional diverse plaintiffs with similar claims lacking the jurisdictional amount, and thus not within the court's § 1332 jurisdiction, does not destroy diversity jurisdiction over the first plaintiff's claims. *See infra* note 14.[12] Exxon argues that it is significant that "a class action is a representative suit," and further contends that a "federal court does not have original jurisdiction over a class or representative action in which unnamed class members do not satisfy the amount in controversy requirement." Exxon Pet. at 16.

Further, in the class action context, the Court will be confronted with the question whether the separate claims of different plaintiffs stemming from different incidents and aggregated for purposes of Rule 23 constitute "part of the same case or controversy under Article III," which is a prerequisite to the triggering of supplemental jurisdiction under § 1367(a). By contrast, Rule 20 joinder, by definition, applies only with respect to claims "arising out of the same transaction, occurrence, or series of transactions or occurrences." Fed. R. Civ. P. 20(a).

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[12] It appears, in contrast, that the addition of non-diverse plaintiffs, which is not at issue in this case, does leave the court without jurisdiction under § 1332, although that fact apparently does not foreclose a court from proceeding with the case by dismissing the non-diverse parties. *See Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 831 (1989).

Also, § 1367(b) expressly addresses its application in the context of Rule 20 (excepting only application to Rule 20 defendants, but not plaintiffs, 28 U.S.C. § 1367(b)), but not in the context of Rule 23. Therefore, construction of the statute as it applies in the class-action context requires a textual analysis in the absence of the express statutory guidance available in the Rule 20 context. *See, e.g.*, *Jacobson v. Ford Motor Co.*, No. 98 C 742, 1999 U.S. Dist. LEXIS 16213, at *32 (N.D. Ill. Sept. 30, 1999) (noting textual distinction between Rules 20 and 23 in the statute); *cf. Allapattah*, 333 F.3d at 1255 ("Notably, Federal Rule of Civil Procedure 23, which pertains to class actions, is not one of the enumerated exceptions" in § 1367(b).).

Moreover, to the extent that the legislative history of § 1367 were to enter the statutory analysis, it would affect differently the statute's application in the Rule 20 and class-action contexts. For example, proponents of the view that all plaintiffs must meet the jurisdictional-amount requirement can point to language from the House Report stating that § 1367 "is not intended to affect the jurisdictional requirements of 28 U.S.C. §1332 in diversity-only class actions." H. Rep. No. 101-734, at 29 (Sept. 21, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6860, 6875. *See Allapattah Servs., Inc.*, 362 F.3d at 774 (Tjoflat, J., dissenting from denial of rehearing en banc). No parallel language can be found directly addressing Rule 20 joinder in the same way.

Whatever one's preliminary answer to the question whether a holding in one of these two contexts necessarily compels the same result in the other context,[13] the differences

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[13] The courts have differed on the answer to this question. *Compare* Pet. App. at 32a n.19 (holding that § 1367 preserves the rule of *Clark* but stating that "the application of § 1367 to diversity-only class actions is a different problem for several reasons"), *with Meritcare*, 166 F.3d at 218 (concluding that § 1367 preserves both *Clark* and *Zahn* and that the *Zahn*

set forth above are reason enough for the Court to consider the issues separately, and to resolve the statute's application in the Rule 20 context before undertaking to apply it in class action cases. The textual argument for allowing supplemental Rule 20 plaintiffs who do not satisfy the amount-in-controversy requirement is simpler and more compelling. Also, as Judge Easterbrook has noted, because allowing joined Rule 20 plaintiffs into federal court involves a far more modest expansion of jurisdiction, it would be "easy to imagine [the Congress] wanting to overturn *Clark* but not *Zahn*; it is much harder to imagine wanting to overturn *Zahn* but not *Clark*, and we have no reason to believe that Congress harbored such a secret desire." *Stromberg*, 77 F.3d at 931. Deciding the Rule 20 issue first would thus allow an incremental approach to the statute, clarifying its reach in a more modest context before considering more aggressive applications.

This is precisely what the Court did in considering the analogous issues under the regime that existed prior to the enactment of § 1367. Following the enactment of the Federal Rules of Civil Procedure, the Court first resolved the jurisdictional requirements in multi-plaintiff cases in the non-class context. *See Clark v. Paul Gray, Inc.*, 306 U.S. 583 (1939). When the Court addressed the issue in the class context, it did so expressly by reference to the general rule set out in *Clark*, and asked whether the special context of the class action compelled any different result. *See Zahn*, 414 U.S. at 292 (noting that the class issue "is governed by the rationale of this Court's prior cases" in the non-class

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line of cases "applies equally to joinder cases and class actions"); *Stromberg*, 77 F.3d at 931 ("Section 1367(a) has changed the basic rule by authorizing pendent-party jurisdiction, and that change affects *Clark* and *Zahn* equally."); *and* Pet. App. at 35a (Torruella, J., dissenting) ("[F]or § 1367 purposes, *Clark* and *Zahn* stand for the same principle.").

context); *id.* at 302 (relying upon "the accepted approach to cases involving ordinary joinder of plaintiffs with separate and distinct claims"). The same order of decision is appropriate with respect to the same issues under the new regime implemented by § 1367.

IV. THE DECISION OF THE COURT BELOW CANNOT BE RECONCILED WITH THE LANGUAGE OF § 1367

Interpretation of an act of Congress begins, of course, with the language of the statute itself. *Lamie v. United States Trustee,* 124 S. Ct. 1023, 1030 (2004). As a general rule, one "must presume that a legislature says in a statute what it means and means in a statute what it says there." *Conn. Nat'l Bank v. Germain,* 503 U.S. 249, 253-54 (1992).

In the context of multiple plaintiffs joined in a case pursuant to Rule 20, some of whom lack the required amount-in-controversy, the application of § 1367 is straightforward. Section 1367(a) describes both the triggering event for the exercise of supplemental jurisdiction and the nature of the claims and parties to which that jurisdiction extends. Section 1367(b) sets forth specific exceptions to the exercise of that jurisdiction, which are applicable in diversity cases brought under § 1332.

The triggering event for the exercise of supplemental jurisdiction is the existence of "any civil action of which the district courts have original jurisdiction." The lawsuit filed here in the District of Puerto Rico was such a case. The complaint as filed satisfied the requirements of complete diversity and, as held by the court below, satisfies the amount-in-controversy requirement as to the injured child, Beatriz. No one has ever argued — nor could they — that there was a basis for dismissal of the entire action on the

ground that the other plaintiffs named in the complaint failed to satisfy that requirement.[14] The district court clearly had jurisdiction over Beatriz's claims, and only the claims of the co-defendants were subject to dismissal under § 1332. Thus, it necessarily follows that the original suit embodying the claims of Beatriz was a "civil action of which the district court[] ha[d] original jurisdiction."

That much being clear, § 1367(a) expressly extends to the district court further "supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III." The statute further makes explicit that this supplemental jurisdiction is not limited to additional claims by the original parties, but "shall include claims that involve the joinder or intervention of additional parties."

Here, all of the claims alleged by all of the parties plainly are part of the same "case or controversy." That is, they arise from the injury to Beatriz involving the tuna can — a single "transaction" or "occurrence," one and the same "nucleus of operative fact." *See, e.g., City of Chicago v. Int'l College of Surgeons*, 522 U.S. 156, 164-65 (1997). Accordingly, the affirmative requirements of § 1367(a) exist for the exercise of supplemental jurisdiction.

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[14] Where some plaintiffs but not others meet the jurisdictional minimum in diversity cases, courts routinely dismiss the claims only of the affected plaintiffs and retain jurisdiction over the valid claims of the remaining plaintiffs. *See, e.g., Hymer v. Chai*, 407 F.2d 136, 137-39 (9th Cir. 1969); *United Pac./Reliance Ins. Cos. v. City of Lewiston*, 372 F. Supp. 700, 704-05 (D. Idaho 1974); *Robison v. Castello*, 331 F. Supp. 667, 669-70 (E.D. La. 1971); *Ciaramitaro v. Woods*, 324 F. Supp. 1388, 1390 (E.D. Mich. 1971); *Rompe v. Yablon*, 277 F. Supp. 662, 665 (S.D.N.Y. 1967). Indeed, that is precisely what the First Circuit did in this case. Pet. App. 33a.

This is true notwithstanding the argument originally articulated by Professor Pfander, 148 U. Pa. L. Rev. 109, 134-137, and adopted by the majority below, that the statute should be given a "sympathetic reading" that preserves this Court's pre-existing decisions in *Clark* and *Zahn* — and thus bars claims of co-plaintiffs who lack the amount-in-controversy. To achieve that result, Pfander's reading construes the "original jurisdiction" requirement triggering supplemental jurisdiction as satisfied only when the district court has § 1332 jurisdiction over the entire action as filed. By that standard, the present action is not one "of which the district courts have original jurisdiction" — even though there was indisputable jurisdiction to resolve Beatriz's claims — because § 1332 did not give the court power to resolve the claims of the other plaintiffs.

This interpretation is fatally flawed, most obviously, because it denies the existence of "original jurisdiction" where such jurisdiction plainly exists.[15] Beyond that, it

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[15] The court below drew support for its conclusion from the fact that 28 U.S.C. § 1441, the general removal statute, which allows removal only if the "civil action" in question is one "of which the district courts . . . have original jurisdiction," § 1441(a), has been construed to "prohibit removal unless the entire action, as it stands at the time of removal, could have been filed in federal court in the first instance." Pet. App. 21a-22a. The court noted that "[b]y the time Congress enacted section 1367 in 1990, this interpretation of section 1441(a) was well-settled," and thus concluded that "Congress purposefully employed language in section 1367(a) that had already been interpreted in section 1441 to incorporate the traditional doctrines of federal jurisdiction — including . . . *Clark*." Pet. App. 22a.

This reasoning is seriously flawed on several grounds. First, this Court has directly addressed the interaction of § 1441 and § 1367, and has rejected the sort of claim-specific interpretation of the removal statute assumed by the court below. When the district courts would have had original jurisdiction over some claim in the case, the entire action is removable under § 1441 so long as the accompanying claims over which

there is no original federal jurisdiction fall within the requirements for supplemental jurisdiction under § 1367. *City of Chicago*, 522 U.S. at 165. Requiring "that we first determine whether [a plaintiff's] state claims constitute 'civil actions' within a district court's 'original jurisdiction'" would "effectively read the supplemental jurisdiction statute out of the books: The whole point of supplemental jurisdiction is to allow the district courts to exercise pendent jurisdiction over claims as to which original jurisdiction is lacking." *Id.* at 167.

Second, the court's conclusion that "section 1367's 'original jurisdiction' requirement [should be] consistent with the settled meaning of identical language in 28 U.S.C. 1441," Pet. App. 21a, makes little sense. The question at hand is not about the meaning of the words "original jurisdiction," but about the scope of the "civil action" referred to in each instance. And in the removal context, where the plaintiff is the master of his own complaint, *Holmes Group, Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 831 (2002); *Caterpillar Inc. v. Williams*, 482 U.S. 386, 398-99 (1987), one would expect that a defendant who wishes to remove a case to federal court would be required to take the case as plaintiff has pled it. Where the complaint as drafted is not within the jurisdiction of the federal court, no principle or doctrine exists that will force the plaintiff to modify it in order to confer such jurisdiction. Nor may the defendant unilaterally sever parties or claims, included by the plaintiff, in order to achieve that result. The reference to a "civil action" in § 1441 thus refers quite naturally to the complaint as drafted by the plaintiff.

No parallel justification exists in the context of § 1367 for construing the words "any civil action of which the district courts have original jurisdiction" to incorporate the same condition that jurisdiction must exist for the entire action as framed by the plaintiff. To the contrary, the facial purpose of the supplemental jurisdiction statute is to confer jurisdiction over claims and parties that are beyond the court's jurisdictional reach based solely on §§ 1331 and 1332. The natural reading of the words here leads to the conclusion that when there is a civil action — *"any civil action"* — over which the federal district court has original jurisdiction, the predicate for the exercise of supplemental jurisdiction (subject to the other limitations and qualifications of § 1367 (a), (b), and (c)) is present.

Further, § 1367(b), by expressly denying supplemental jurisdiction for the purpose of joining under Rule 20 *defendants* who could not otherwise be joined under § 1332, appears to contemplate that such jurisdiction is

ignores the fact that the whole point of § 1367 is to confer upon the federal court additional jurisdiction, beyond what is possible under either § 1331 or § 1332. If the essential predicate for the exercise of supplemental jurisdiction were really the existence of § 1331 or § 1332 jurisdiction over every aspect of a plaintiff's complaint, then the supplemental jurisdiction would have no effect at all on the claims or parties who may be named in the original complaint. Such a result is sharply at odds with Congress's undisputed desire to abrograte this Court's holding in *Finley*, as well as with § 1367(a)'s express provision extending supplemental jurisdiction to additional claims and additional parties, to the extent that the claims involved are part of the same "case or controversy" as the claims already within the jurisdiction of the court.

If one thus concludes that the affirmative requirements of § 1367(a) are met, one must further consider the provisions of § 1367(b), which expressly qualify and limit the grant of supplemental jurisdiction in diversity cases. In drafting § 1367(b), Congress obviously had in mind, and expressly imposed, certain limitations — but not others — on the use of supplemental jurisdiction to extend federal judicial power beyond the traditional limits of the diversity jurisdiction. It did this by expressly providing that any joinder of specified parties and/or claims, pursuant to particular rules of procedure, is permissible only if consistent with the requirements of § 1332.

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available to join *plaintiffs*, if the remaining requirements of § 1367 are met. These provisions regarding Rule 20 joinder cannot be reconciled with the so-called "sympathetic reading" of § 1367, under which § 1332 jurisdiction over the entire complaint is an essential prerequisite to any exercise of supplemental jurisdiction. Under that reading, supplemental jurisdiction to support Rule 20 joinder of additional plaintiffs exists only in those cases where it is not needed because § 1332 jurisdiction already exists.

Specifically, the statute states that the requirements of § 1332 must be met with regard to "claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24" of the Federal Rules, and "claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules."

Thus, plaintiffs in a diversity suit are expressly required to satisfy the requirements of § 1332 with regard to any claims against defendants whose joinder is to be justified under Rule 20 — which allows joinder of multiple parties in connection with claims "arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action." Fed. R. Civ. P. 20(a). Section 1367 thus will not allow a plaintiff to join multiple defendants as to whom plaintiff does not meet the amount-in-controversy requirement.

At the same time, § 1367(b) creates no parallel exception for multiple plaintiffs who voluntarily join in one complaint as allowed by Rule 20. The only reasonable conclusion is that § 1367 authorizes supplemental jurisdiction over multiple plaintiffs who join in one complaint under Rule 20 but do not all meet the amount-in-controversy requirement of § 1332, but no such jurisdiction over multiple defendants who plaintiff seeks to bring into federal court although the amount-in-controversy is lacking.[16]

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[16] Such a jurisdictional scheme is perfectly sensible. Congress could well have sought to reserve supplemental jurisdiction in the diversity context as a tool by which willing plaintiffs with § 1332 jurisdiction against certain defendants can join together with other plaintiffs in one complaint to assert claims against those defendants arising from the same case or controversy, even though some plaintiffs lack the amount-in-controversy. Allowing such voluntary joinder of co-plaintiffs to pursue factually-related claims against defendants already in federal court

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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pursuant to § 1332, is quite different than asserting federal court jurisdiction over new defendants or adding new plaintiffs not voluntarily joined by the existing plaintiffs, all in connection with only state law claims and in the absence of § 1332 jurisdiction. Section 1367(b) thus, in part, prevents the forced inclusion in diversity actions of defendants as to whom the requirements of § 1332 are not satisfied, or of similarly situated plaintiffs who the original plaintiffs are unwilling to join with under Rule 20.

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Maria Del ROSARIO ORTEGA; Sergio Blanco, by themselves and representing minors Beatriz Blanco-Ortega and Patrizia Blanco-Ortega, Plaintiffs, Appellants,

v.

STAR-KIST FOODS, INC., Defendant, Appellee.

No. 02-2530.

Heard Nov. 5, 2003.
Decided June 2, 2004.

Before BOUDIN, Chief Judge, TORRUELLA and LYNCH, Circuit Judges.

LYNCH, Circuit Judge.

In April 1999, Beatriz Blanco-Ortega, then nine years old, cut her right pinky finger on a can of Star-Kist tuna. That is not normally the stuff of lawsuits in federal court, but her injuries were more than trivial and led to surgery, the prospect of future surgery, and minor permanent disability and scarring. Beatriz, along with her parents and sister, sued in federal court, asserting diversity jurisdiction. 28 U.S.C. § 1332. The claims of Beatriz's family members were composed of emotional distress damages, with the mother asserting medical expenses as well. Plaintiffs' choice of federal court was no doubt influenced by the fact that civil jury trials are unavailable in the local courts of Puerto Rico.

The case raises two issues. First is the classic question whether each of the plaintiffs meets the amount-in-controversy requirement for diversity jurisdiction. 28 U.S.C. § 1332(a). The district court, using an analytic approach that we have since rejected, *see Stewart v. Tupperware Corp.*, 356 F.3d 335, 339 (1st Cir. 2004), held that it was a legal certainty that none of the plaintiffs' claims was worth $75,000 and so dismissed the case for lack of jurisdiction. As to the injured child, Beatriz, we reverse and hold that it is

not a legal certainty that she could not recover an award over $75,000. But we uphold the district court's conclusion that none of Beatriz's family members satisfies the amount-in-controversy requirement.

The second question is whether Beatriz's family members may nonetheless remain as plaintiffs under the supplemental jurisdiction statute, 28 U.S.C. § 1367. This is a very difficult question, new to this court, on which the circuits have split. We hold that by limiting supplemental jurisdiction to "civil action[s] of which the district courts have original jurisdiction," § 1367(a), Congress preserved the traditional rule that each plaintiff in a diversity action must separately satisfy the amount-in-controversy requirement. Accordingly, we affirm the dismissal of Beatriz's family members' claims for lack of subject-matter jurisdiction.

I.

On April 17, 2000, Beatriz Blanco-Ortega, along with three family members, filed a diversity suit against Star-Kist Foods Inc., Star-Kist Caribe Inc., and their unnamed insurers in the district of Puerto Rico. Besides Beatriz, the plaintiffs consisted of her mother, Maria del Rosario-Ortega; her father, Sergio Blanco; and her sister, Patrizia Blanco-Ortega. The defendants promptly moved to dismiss the complaint for lack of jurisdiction, claiming that there was not complete diversity of citizenship because Star-Kist Caribe Inc., the branch of Star-Kist that does business in Puerto Rico, was a Puerto Rico citizen for purposes of the diversity statute. The district court agreed and dismissed the complaint without prejudice.

The plaintiffs re-filed their complaint on February 28, 2001, this time only naming Star-Kist Foods, Inc. and its unnamed insurers as defendants. The complaint alleged that Beatriz had suffered physical damages of not less than $500,000 and emotional damages of not less than $400,000. It also alleged that each of her three family members had suffered emotional damages in excess of $150,000 and that

Mrs. Ortega had also incurred $4,927.07 in past medical expenses and $25,000 in estimated future medical expenses.

On October 24, 2001, Star-Kist moved for summary judgment, alleging that none of the plaintiffs could satisfy the $75,000 amount-in-controversy requirement. The district court agreed and on July 18, 2002, once again dismissed all of the plaintiffs' claims without prejudice for want of jurisdiction. The four plaintiffs appeal that decision.

II.

A. Amount-in-Controversy Requirement

In 1938, the Supreme Court established the basic standard by which to evaluate a challenge that a plaintiff has not met the jurisdictional amount-in-controversy requirement:

> The rule governing dismissal for want of jurisdiction in cases brought in federal court is that, unless the law gives a different rule, the sum claimed by the plaintiff controls if the claim is apparently made in good faith. It must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal.

St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 288-89 (1938) (internal citations omitted).

"Under *St. Paul*, a plaintiff's allegations of damages that meet the amount-in-controversy requirement suffices unless questioned by the opposing party or the court." *Spielman v. Genzyme Corp.*, 251 F.3d 1, 5 (1st Cir. 2001). Once a defendant questions jurisdiction by challenging the amount of damages alleged in the complaint, the burden shifts to the plaintiff to show that it is not a legal certainty that the claims do not involve the requisite amount.[1] *Id.* at 4; *Barrett v.*

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[1] At one point, the district court wrongly said that "once the defendant challenges the amount of damages alleged in the complaint, then the burden shifts to the plaintiffs to establish facts indicating that, to a legal certainty, the claims involve more than the jurisdictional minimum."

Lombardi, 239 F.3d 23, 30-31 (1st Cir. 2001). "A party may meet this burden by amending the pleadings or by submitting affidavits." *Dep't of Recreation & Sports v. World Boxing Ass'n*, 942 F.2d 84, 88 (1st Cir. 1991). When there are several plaintiffs, each must present claims that meet the jurisdictional amount.[2] *Clark v. Paul Gray Inc.*, 306 U.S. 583, 589 (1939). Once a district court dismisses for failure to meet the jurisdictional amount, the court of appeals reviews that judgment de novo. *Spielman*, 251 F.3d at 4.

The basic error committed by the district court was to evaluate the amount-in-controversy by reference to amounts that the Supreme Court of Puerto Rico has found reasonable in tort cases. As we noted in *Stewart*, the analogy is imperfect in multiple respects, most notably because Puerto Rico does not have jury trials in civil cases. 356 F.3d at 339. We thus conduct the amount-in-controversy inquiry de novo, looking to each plaintiff individually.

The plaintiffs presented the following evidence in response to Star-Kist's challenge to the amounts alleged in the complaint: the deposition testimony of each of the four plaintiffs, the medical report of Dr. Zegarra (Beatriz's treating physician), hospital records, receipts for the payment of Beatriz's treatment, pictures of Beatriz's hand after the surgery, and the testimony of both the school nurse and the school paramedic who initially treated Beatriz when she cut herself.

This is incorrect; the plaintiff need only show it is *not* a legal certainty that the claims will *not* result in a verdict for the amount in controversy. The double negative has substantive meaning. Ultimately, it appears the district court did use the correct standard regarding the plaintiffs' burden despite this error in laying out the law.

[2] We address the supplemental jurisdiction question below.

This evidence established that after Beatriz cut her pinky finger while opening a can of Star-Kist tuna, she went to the school infirmary. The nurse and a paramedic were able to stop the bleeding after fifteen to thirty minutes. The nurse said that the cut was deep and bled profusely. A school official called Mrs. Ortega at home to tell her about Beatriz's injury, and Mrs. Ortega went to the school to pick up Beatriz. Mrs. Ortega then took Beatriz to the emergency room of a nearby hospital, where a doctor indicated that Beatriz may have severed her tendons and nerves. Mrs. Ortega contacted Dr. Zegarra, a hand surgeon, by phone while she was at the hospital, and scheduled an immediate appointment. Together, Mrs. Ortega and Beatriz went immediately from the hospital to Dr. Zegarra's office.

Dr. Zegarra confirmed that Beatriz had in fact damaged her nerves and tendons and determined that she required surgery. He was unable to secure an operating room for that day, so the surgery was scheduled for April 22, the next day. The surgery, which required Beatriz to be put under general anesthesia, successfully repaired Beatriz's deep flexor tendon and digital nerve. After the surgery, Beatriz attended physical therapy, which was painful, three times a week for a three-month period. Beatriz continued the physical therapy for eight months in total and wore a cast throughout that entire period. The therapy impaired her ability to write and paint in school and forced her to drop out of a volleyball tournament. Her finger bears a small scar and is slightly bent. Despite the successful surgery, Beatriz has been diagnosed with a 3% partial permanent impairment of the functioning of her hand. The medical prognosis is that the injury could become worse as she grows and that she may need more surgery.

Given Beatriz's permanent physical impairment, the surgery, and the claimed pain and suffering (bearing in mind the potential impact of the injury and its aftermath on a young girl), we cannot say to a legal certainty that Beatriz could not recover a jury award larger than $75,000. *See*

Stewart, 356 F.3d at 340 (plaintiffs met jurisdictional minimum where evidence suggested that each had suffered permanent physical impairment, had endured non-trivial pain and suffering damages by having to spend honeymoon in a hospital, and might require future medical services); *Gebbia v. Wal-Mart Stores, Inc.*, 233 F.3d 880, 883 (5th Cir. 2000) (plaintiff's allegations that, as a result of falling in defendant's store, she sustained injuries to her wrist, knee and back, resulting in permanent disability and disfigurement and causing pain and suffering and lost wages, were sufficient to meet jurisdictional amount-in-controversy requirement); *Rosenboro v. Kim*, 994 F.2d 13, 18-19 (D.C. Cir. 1993) ("[T]he presence of medical evidence showing that a plaintiff is suffering from a continuing or permanent physical impairment [is] an important indicator" in determining whether the plaintiff meets the amount-in-controversy requirement).

The other plaintiffs fare differently. Mrs. Ortega presented evidence that she paid $4,927.07 for past medical expenses and says that she anticipates paying $25,000 in future medical expenses. She also claims that her emotional distress damages totaled $250,000. We assume arguendo that Mrs. Ortega can claim the past medical expenses and some future medical expenses.[3] But there was no support at all for the $25,000 figure for future medical expenses that she alleged, and a lower figure appears to be in order, given that past expenses were less than $5,000. Even if she could claim all $25,000, there is still quite a gap between the medical expenses and $75,000.

We conclude that Mrs. Ortega cannot fill this entire gap with her emotional distress damages. *Cf. Jimenez Puig v.*

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[3] As for future medical expenses, Mrs. Ortega suggested in her deposition that any future surgery Beatriz might have on her finger would be elective.

Avis Rent-A-Car Sys., 574 F.2d 37, 40 (1st Cir. 1978) (amount-in-controversy requirement of $10,000 was not met in claim for short-lived embarrassment and anger resulting from a car-rental clerk's public destruction of credit card and announcement that plaintiff had failed to pay his bills). One of the normal responsibilities of parenthood is dealing with a child's cuts and scrapes, and here the injuries were relatively minor. Neither Beatriz nor her mother sought any counseling relating to the injury. Moreover, Mrs. Ortega did not personally witness Beatriz's accident or the immediate aftermath.

Mrs. Ortega tries to argue that she meets the jurisdictional amount by relying on remittitur cases. Certainly courts may resort to analogous cases involving remittitur in determining whether a plaintiff can meet the amount-in-controversy requirement in a diversity case. But the utility of remittitur cases will vary depending on at least three factors—the factual similarities between the cases, the difference in viewpoints between the start of a case and the end of a case, and both the jury award in the remittitur case and the amount to which it was reduced.

Remittitur of a jury award is ordered when the award is "grossly excessive, inordinate, shocking to the conscience of the court, or so high that it would be a denial of justice to permit it to stand." *Correa v. Hosp. San Francisco*, 69 F.3d 1184, 1197 (1st Cir. 1995). In such cases, the rule in this circuit is that the jury award should be remitted "to the maximum that would be upheld by the trial court as not excessive." *Jones & Jones v. Pineda & Pineda*, 22 F.3d 391, 398 (1st Cir. 1994). The plaintiff has a choice between accepting the remittitur amount or opting for a new trial. *See Liberty Mut. Ins. Co. v. Cont'l Cas. Co.*, 771 F.2d 579, 588 (1st Cir. 1985).

While remittitur determinations are based on what has been proved at trial, amount-in-controversy determinations are made at the outset of the case. *See generally* 14B Wright

& Miller, *Fed. Prac. & Proc.* § 3702 (2d ed. 2003). This different procedural lens complicates determining whether there is sufficient factual similarity between the remittitur case and the jurisdictional case. To be useful, the facts of injury and damages that were actually proved to the jury in the remittitur case must be similar to the facts, taken in the light most favorable to the plaintiff, that could be proved in the jurisdictional case.

Moreover, for an analogy to a remittitur case to be useful, the difference between the numbers involved in the remittitur case must be taken into account. These amounts are (1) the jury award that was deemed excessive in a remittitur case and (2) the amount to which that award was remitted. If, assuming the cases are otherwise similar, both numbers are above the jurisdictional minimum (*i.e.*, $75,000), then the remittitur case supports the conclusion that the amount-in-controversy requirement has been met. Similarly, if both the jury award and the amount to which it was remitted are less than $75,000, that supports the conclusion that the amount-in-controversy requirement cannot be met.

More problematic are remittitur cases hovering around the jurisdictional amount—*i.e.*, cases in which the jury award is above the jurisdictional amount but the amount to which the award was remitted is below the jurisdictional amount. In theory, the amount to which the award was remitted should be the maximum possible amount that was legally permissible, and thus should be the applicable basis of comparison. But theory is often a long way from reality. As we have noted before, "converting feelings such as pain and suffering and the loss of enjoyment of life into dollars is not an exact science." *Smith*, 177 F.3d at 33 n.5. One safety valve for the inherent difficulty in selecting a remittitur amount is that the plaintiff is given the choice of accepting the reduced amount or opting for a new trial. *See Liberty Mut. Ins. Co.*, 771 F.2d at 588. The difficulty in converting pain and suffering into a dollar amount makes each case very

fact-specific, thus decreasing the usefulness of a remittitur case hovering around the jurisdictional amount.

Mrs. Ortega argues by reference to a remittitur case, *Smith v. Kmart Corp.*, 177 F.3d 19 (1st Cir. 1999). In that case, a husband and wife were shopping in defendant's store when the wife was struck on the head by a cooler that fell from a shelf. *Id.* at 22. As a result of the blow, the wife lost consciousness for close to a minute, leading the husband to administer mouth-to-mouth resuscitation. *Id.* at 22. He testified that he believed his wife was dead. *Id.* at 23. Eventually an ambulance arrived, and paramedics placed a cervical collar around the wife's neck and transported her on to the ambulance using a stiff board that had been placed underneath her. *Id.* at 22. The wife suffered from the blow for months after the injury. *Id.* The jury awarded the husband $250,000 in emotional distress damages, and the appellate court remitted that award to $100,000. *Id.* at 32-33. Mrs. Ortega argues that her case is similar to the husband's in *Smith* and that even the $100,000 amount to which damages were remitted in that case is larger than the $75,000 minimum.

Mrs. Ortega's reliance on *Smith* fails even though both the original award and the reduced amount were greater than the jurisdictional minimum, because Mrs. Ortega's case is not sufficiently factually similar to *Smith*. Beatriz's injury, on the basis of the plaintiffs' complaint, was not nearly as dramatic or disruptive as the wife's injury in *Smith*. No one believed that Beatriz would die of the cut on her finger and there was no dramatic witnessing of the accident, unlike in *Smith*. Moreover, unlike the husband in Smith, Mrs. Ortega has not alleged that the accident has in any way strained her relationship with Beatriz. *See id.* at 23.

Beatriz's sister Patrizia has an even less substantial claim for emotional distress damages than her mother. Patrizia was a student in Washington, D.C. at the time of the injury and did not return home due to the accident. Although she

did take Beatriz to some physical therapy sessions after she returned from school over the summer, Patrizia did not miss any work or school obligations to do so. Like the others, there is no evidence of Patrizia's receiving any counseling services in connection with her little sister's injury. It is legally certain that Patrizia could not recover an award over $75,000 for her emotional distress.

It is also legally certain that the claims of Beatriz's father, Sergio Blanco, do not meet the $75,000 threshold. Mr. Blanco is divorced from Beatriz's mother and does not live with Beatriz. He spent half a day at the hospital during Beatriz's surgery, but he did not bring Beatriz to any medical appointments. Mr. Blanco's claim to emotional distress damages over $75,000 is too tenuous.

In short, only Beatriz's claim satisfies the jurisdictional requirements of § 1332. Her family members' claims do not meet the minimum amount-in-controversy, and no other independent basis for federal jurisdiction (*e.g.*, federal question jurisdiction) exists over those claims.

B. Supplemental Jurisdiction under § 1367

This leaves the issue of supplemental jurisdiction. Beatriz's family members cannot file their own suits against Star-Kist in federal court. The question is whether the supplemental jurisdiction statute, 28 U.S.C. § 1367, allows them to proceed in federal court nonetheless on the basis of Beatriz's jurisdictionally sufficient claim.

Though simple to state, the question has not been answered in this circuit,[4] and its proper resolution is far from clear. The courts of appeals are sharply divided over whether § 1367 allows parties who cannot themselves satisfy § 1332's amount-in-controversy requirement to sue in

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[4] We noted the issue in the class-action context in *Spielman v. Genzyme Corp.*, 251 F.3d 1, 7 n.5 (1st Cir. 2001).

federal court by joining forces with a plaintiff who can. The Supreme Court once granted certiorari to resolve the matter, but it ultimately split 4-4 and affirmed without opinion. *See Free v. Abbott Labs., Inc.*, 529 U.S. 333 (2000).[5]

The problem has actually arisen in two contexts, each of which is the subject of a circuit split. First, there are cases—like Beatriz's—involving the ordinary joinder of additional plaintiffs under Fed. R. Civ. P. 20. *Compare Stromberg Metal Works, Inc. v. Press Mech., Inc.*, 77 F.3d 928, 932 (7th Cir. 1996) (where one plaintiff satisfies the amount-in-controversy requirement, § 1367 permits jurisdiction over transactionally related claims by co-plaintiffs who do not), *with Meritcare, Inc. v. St. Paul Mercury Ins. Co.*, 166 F.3d 214, 216 (3d Cir. 1999) (each co-plaintiff must independently satisfy the amount-in-controversy requirement). Second, there are cases involving the claims of absent class members in diversity-only class actions. *Compare Allapattah Serv., Inc. v. Exxon Corp.*, 333 F.3d 1248, 1254 (11th Cir. 2003) (section 1367 authorizes jurisdiction over all class members' claims if the named plaintiffs satisfy the amount-in-controversy requirement); *Gibson v. Chrysler Corp.*, 261 F.3d 927, 934 (9th Cir. 2001) (same); *Rosmer v. Pfizer, Inc.*, 263 F.3d 110, 114 (4th Cir. 2001) (same); *and In re Abbott Labs.*, 51 F.3d 524, 528 (5th Cir. 1995) (same), *with Trimble v. Asarco, Inc.*, 232 F.3d 946, 962 (8th Cir. 2000) (section 1367 does not extend jurisdiction over class members who do not independently meet the amount-in-controversy requirement); *and Leonhardt v. W. Sugar Co.*, 160 F.3d 631, 640 (10th Cir. 1998) (same).[6] Because the same statutory language applies

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[5] An unexplained affirmance by an equally divided Court has no precedential value. *See Rutledge v. United States*, 517 U.S. 292, 304 (1996).

[6] The district courts in our circuit are similarly split. *Compare Payne v. Goodyear Tire & Rubber Co.*, 229 F. Supp. 2d 43, 52 (D. Mass. 2002)

in both contexts, some courts have lumped the two together for purposes of § 1367. *See, e.g., Meritcare*, 166 F.3d at 218; *Stromberg*, 77 F.3d at 931. Our case involves only Rule 20 joinder, however, and we express no view regarding the application of § 1367 in class actions.[7]

Even aside from the circuit split, this is an area where courts are wise to tread carefully. The problem of pendent-party jurisdiction implicates some of the most sensitive and enduring issues in the law of federal jurisdiction, and it directly affects the allocation of judicial business among the state and federal courts. In the end, certainty can come only from Congress or the Supreme Court. For now, we disagree with the Seventh Circuit and join the Third Circuit in holding that, at least in cases of Rule 20 joinder, § 1367 did not upset the settled rule that each plaintiff must independently satisfy the diversity statute's amount-in-controversy requirement.

1. *Background*

Before 1990, it is clear, Beatriz's family members could not have joined in Beatriz's diversity suit unless they each stood to recover more than the minimum amount required for jurisdiction. As early as 1911, the Supreme Court declared that "[w]hen two or more plaintiffs, having separate and distinct demands, unite for convenience and economy in a single suit, it is essential that the demand of each be of the

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(section 1367 permits supplemental jurisdiction over pendent party plaintiffs who do not themselves satisfy requirements of § 1332); *and Duhaime v. John Hancock Mut. Life Ins. Co.*, 177 F.R.D. 54, 60 (D. Mass. 1997) (same), *with Arias v. Am. Airlines, Inc.*, 163 F. Supp. 2d 111, 115 (D.P.R. 2001) (each plaintiff must independently meet the requirements of diversity jurisdiction); *and Mayo v. Key Fin. Servs., Inc.*, 812 F. Supp. 277, 278 (D. Mass. 1993) (same).

[7] In our view, class actions raise unique problems that will be better addressed with the benefit of briefing and argument in a case requiring us to consider them. *See infra* note 19.

requisite jurisdictional amount." *Troy Bank v. G.A. Whitehead & Co.*, 222 U.S. 39, 40 (1911). That rule is now commonly associated with *Clark v. Paul Gray, Inc.*, 306 U.S. 583 (1939), which reaffirmed *Troy Bank* after the adoption of the Federal Rules of Civil Procedure. *See* 306 U.S. at 589. Even after *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966), in which the Supreme Court approved pendent-claim jurisdiction in federal-question cases, *see id.* at 725, *Clark* remained good law: "[M]ultiple plaintiffs with separate and distinct claims must each satisfy the jurisdictional-amount requirement for suit in the federal courts." *Zahn v. Int'l Paper Co.*, 414 U.S. 291, 294 (1973); *see also Aldinger v. Howard*, 427 U.S. 1, 15-16 (1976) (distinguishing pendent-party jurisdiction from the type of pendent-claim jurisdiction permitted in *Gibbs*). If the *Clark* rule applies in this case, we should affirm the dismissal as to Beatriz's family members but vacate as to Beatriz, thereby leaving Beatriz free to choose between proceeding alone in federal court or voluntarily dismissing her complaint and re-filing together with her family in the Puerto Rico courts. *See Clark*, 306 U.S. at 590.

Whether *Clark* continues to apply today depends on how one reads 28 U.S.C. § 1367, the supplemental jurisdiction statute, which was enacted by Congress in 1990. *See* Judicial Improvements Act of 1990, Pub. L. No. 101-650, 104 Stat. 5089, § 310. In relevant part, § 1367 provides:

> (a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

> (b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

The impetus for Congress's adoption of § 1367 was the Supreme Court's 5-4 decision in *Finley v. United States*, 490 U.S. 545 (1989). *See generally Raygor v. Regents of the Univ. of Minn.*, 534 U.S. 533, 539-40 (2002). *Finley* did not deal with the amount-in-controversy requirement. Rather, the plaintiff in *Finley* had filed suit against the United States under the Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346(b), alleging that the government's failure to maintain certain airport runway lights had contributed to the death of her husband and children in an airplane accident. 490 U.S. at 546. Later, she amended her complaint to add state-law tort claims against two new defendants, a municipality and a utility company. No independent basis for federal subject-matter jurisdiction existed over those claims. *Id.* The Supreme Court acknowledged that the plaintiff could not have brought her entire action in state court because federal jurisdiction in FTCA cases is exclusive, but it held nevertheless that the district court lacked jurisdiction over the "pendent-party" state-law claims. *Id.* at 555-56. The Court concluded by noting that Congress was free to reverse that result if it wished. *Id.* at 556.

Congress did so in § 1367. *See Raygor*, 534 U.S. at 540; *id.* at 550 (Stevens, J., dissenting); *Ponce Fed. Bank, F.S.B. v. The Vessel "Lady Abby"*, 980 F.2d 56, 58 (1st Cir. 1992) (Breyer, C.J.) (section 1367 overturns *Finley*). The text of the statute, however, can be read to do more than overturn

Finley.[8] The jurisdictional grant, which appears in section (a), is not limited to cases like *Finley* involving exclusive federal jurisdiction, or even to federal-question cases generally. Instead, subsection (a) permits the district courts to hear any claim arising from the same constitutional case or controversy "in any civil action of which the district courts have original jurisdiction." Subsection (b) then creates an exception to that grant for certain claims in diversity cases. The result is a jurisdictional grant of such apparent breadth that, as one commentator succinctly put it, "the statute has created confusion in a number of areas in which principles were thought to be well established." 13B Wright, Miller, & Cooper, *Fed. Prac. & Proc.* § 3567.2 (2d ed. 2003).

2. *Section 1367 and the* Clark *Rule*

One such area of confusion involves the continued validity of *Clark* in the wake of § 1367. The case law on this issue is split between two competing interpretations of § 1367.

The first, adopted by the Seventh Circuit in *Stromberg*, turns on Congress's failure to include Rule 20 plaintiffs among those parties who cannot rely on supplemental jurisdiction where doing so would be inconsistent with § 1332. *See* § 1367(b) (restricting supplemental jurisdiction over parties joined as plaintiffs under Rules 19 or 24, but omitting Rule 20 plaintiffs). On this reading, § 1367 overturns *Clark* and extends supplemental jurisdiction over claims asserted by diversity plaintiffs who cannot meet the

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[8] *See* Arthur & Freer, *Grasping at Burnt Straws: The Disaster of the Supplemental Jurisdiction Statute*, 40 Emory L.J. 963, 980 (1991) ("Congress could have overruled the holding in *Finley* quite simply and cleanly, without affecting other areas. . . . Why the statute had to go further, we do not know. That the statute went further, there can be no doubt.").

amount-in-controversy requirement, provided that at least one plaintiff in the action has a jurisdictionally sufficient claim. *See Stromberg*, 77 F.3d at 930-32.

The second interpretation, originally suggested in an article by Professor Pfander[9] and later adopted by the Tenth Circuit in *Leonhardt*, emphasizes the requirement in § 1367(a) that the district court must first have "original jurisdiction" over an action before supplemental jurisdiction can apply. *See Leonhardt*, 160 F.3d at 640 (citing Pfander). On this reading, § 1367 *preserves* the rule in *Clark* and thus does not supply supplemental jurisdiction where, as in this case, only one of the named plaintiffs meets the amount in controversy. Although *Leonhardt* was a class action case, the Third Circuit subsequently endorsed its reasoning in *Meritcare*, a Rule 20 joinder case with facts analogous to the case at bar. *See* 166 F.3d at 221-22 (citing *Leonhardt* with approval).

We recognize that plausible textual arguments can be made in favor of either of these readings. For the reasons that follow, however, we conclude that *Leonhardt* and *Meritcare* embody the better reading of § 1367.

a. *Text of § 1367*

We begin with the text of the statute. *BedRoc Ltd. v. United States*, 124 S. Ct. 1587, 1593 (2004). Given the historical and legal background against which Congress enacted § 1367, we think the *Leonhardt/Meritcare* approach makes the best sense of the statutory text. Still, neither *Leonhardt* nor *Meritcare* fully explained the historical and doctrinal significance of Congress's choice of words in § 1367. Given the long history of the Judicial Code and the enormous body of law and scholarship that surrounds it, that

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[9] Pfander, *Supplemental Jurisdiction and Section 1367: The Case for a Sympathetic Textualism*, 148 U. Pa. L. Rev. 109 (1999).

context provides a crucial guide to the meaning of the statute. *See Nat'l Archives & Records Admin. v. Favish*, 124 S. Ct. 1570, 1579 (2004) (assuming, in interpreting a federal statute, that "Congress legislated against [a] background of law, scholarship, and history").

The first sentence of § 1367 specifies that supplemental jurisdiction can only apply in a "civil action of which the district courts have original jurisdiction." § 1367(a). That phrase unambiguously invokes the language that Congress has used for more than two hundred years to confer jurisdiction on the federal district courts in civil cases. Nearly every jurisdictional grant in Title 28 provides that "the district courts shall have original jurisdiction" of "civil action[s]" within the scope of the grant. *See, e.g.*, 28 U.S.C. § § 1331 (federal questions), 1332 (diversity), 1335 (interpleader), 1337 (antitrust), 1338 (intellectual property), 1339 (postal matters), 1340 (internal revenue). Such grants, in turn, have been the subject of judicial interpretation for centuries. *E.g., Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806). By invoking the concept of a district court's "original jurisdiction" over a "civil action," Congress presumptively incorporated into § 1367 the longstanding, judicially developed doctrines that determine whether those statutes confer "original jurisdiction" over a particular civil action. *See Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 614-15 (2001) (Scalia, J., concurring) ("[W]here Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken . . . ." (quoting *Morissette v. United States*, 342 U.S. 246, 263 (1952))).

That is important because, under well-settled law, joinder and aggregation have different implications for the existence of "original jurisdiction" in federal-question and diversity cases. Under the federal-question statute, 28 U.S.C. § 1331, the original jurisdiction of the district courts is triggered if

the action "aris[es] under the Constitution, laws, or treaties of the United States." All that is required is the federal question. *Osborn v. Bank of United States*, 22 U.S. (9 Wheat) 738, 822 (1824) (Marshall, C.J.); *see City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 164-66 (1997). Joinder questions arise only after "original jurisdiction" is established, and only to the extent that the court seeks to decide non-federal questions incident to disposition of the federal question.[10] *See Osborn*, 22 U.S. at 822.

Under § 1332, by contrast, joinder and aggregation questions can actually *determine* whether the district court has "original jurisdiction" over the action. Joinder affects original jurisdiction through the complete diversity rule of *Strawbridge v. Curtiss, supra*. *See Wisconsin Dep't of Corr. v. Schacht*, 524 U.S. 381, 389 (1998) ("The presence of [a] nondiverse party automatically destroys original jurisdiction . . . ."). Aggregation issues affect original jurisdiction because *Clark* prohibits multiple plaintiffs from combining their claims to clear the amount-in-controversy bar. *See* 306 U.S. at 589. *Strawbridge* and *Clark*, in turn, are binding interpretations of the diversity statute. *See State Farm Fire & Casualty Co. v. Tashire*, 386 U.S. 523, 530-31 (1967) (complete diversity rule is statutory); *Snyder v. Harris*, 394 U.S. 332, 336 (1969) (*Clark* anti-aggregation rule is statutory). Unless both rules are satisfied, the statute does not confer original jurisdiction on the district court. *Sheldon v. Sill*, 49 U.S. (8 How.) 441, 449 (1850) ("Courts created by statute can have no jurisdiction but such as the statute confers.").

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[10] Until 1980, the federal question statute also had an amount-in-controversy requirement. *See* Act of Dec. 1, 1980, Pub. L. No. 96-486, § 2, 94 Stat. 2369 (eliminating the amount-in-controversy requirement from § 1331). If that requirement were still in effect today, aggregation issues would affect the existence of "original jurisdiction" under § 1331.

Thus, Congress preserved both *Clark* and *Strawbridge* by providing that, before supplemental jurisdiction can attach, the district court must first have "original jurisdiction" over the action. *See* Pfander, *Supplemental Jurisdiction and Section 1367: The Case for a Sympathetic Textualism*, 148 U. Pa. L. Rev. 109, 148-49 (1999). In a diversity case, if the *Clark* rule is not met, or if the parties are not completely diverse, then the "original jurisdiction" requirement in § 1367(a) is not satisfied and supplemental jurisdiction will not attach. On the other hand, if the parties are completely diverse and each plaintiff separately meets the amount-in-controversy requirement, then § 1332 is satisfied and the "original jurisdiction" requirement is met. If so, § 1367 will support any transactionally related claims that the plaintiffs may wish to bring—but only so long as § 1367(b) is satisfied, and only as long as original jurisdiction is not destroyed. This last qualification is important because it precludes a plaintiff from, for example, using § 1367 to circumvent *Strawbridge* by amending her complaint to add a nondiverse party after "original jurisdiction" is initially established. *Cf. Grupo Dataflux v. Atlas Global Group, L.P.*, 124 S. Ct. 1920, 1926 (2004) (noting that a post-filing change in the *parties* to an action, unlike a change in the initial parties' citizenship, can affect subject-matter jurisdiction); *Am. Fiber & Finishing, Inc. v. Tyco Healthcare Group, L.P.*, 362 F.3d 136, 140-41 (1st Cir. 2004) (subject-matter jurisdiction was destroyed and dismissal was required where a diversity plaintiff amended its complaint to join a non-diverse party).

On this reading of § 1367, Beatriz's family members cannot rely on supplemental jurisdiction to support their claims: their complaint does not satisfy *Clark*, so "original jurisdiction" fails under § 1332. *Snyder*, 394 U.S. at 336. As a result, this "civil action" is not one "of which the district courts have original jurisdiction," and § 1367 does not apply.

We are persuaded to adopt this reading of the statutory text for several reasons. First, it gives effect to Congress's requirement that the district court must have "original jurisdiction" over the "civil action" before supplemental jurisdiction can apply. *See Bui v. DiPaolo*, 170 F.3d 232, 237 (1st Cir. 1999) (statutes should be interpreted to give effect to every word and phrase). Congress could have applied a different test in § 1367(a)—for example, it could have permitted supplemental jurisdiction whenever any single claim in the action would have supported original jurisdiction if it had been brought by itself.[11] But that is not what the statute says.[12] *See* Pfander, *supra*, at 141 (noting

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[11] The dissent would apply such a test in this case. According to the dissent, § 1367 authorizes supplemental jurisdiction whenever the district court has "original jurisdiction over a *claim*." (emphasis added). The problem with the dissent's theory is that § 1367(a) does not refer to original jurisdiction over "claims." Rather, the statute requires a "*civil action* of which the district courts have original jurisdiction." § 1367(a) (emphasis added).

That distinction is critical. The Supreme Court has never held that original jurisdiction exists over a "civil action" under § 1332 simply because *one claim* in the action is between diverse parties and exceeds the jurisdictional minimum. On the contrary, original jurisdiction does not lie unless *all* of the parties in the case are diverse. *See Wis. Dep't of Corr. v. Schacht*, 524 U.S. 381, 388 (1998) ("A case falls within the federal district court's 'original' diversity 'jurisdiction' only if diversity of citizenship among the parties is complete, *i.e.*, only if there is no plaintiff and no defendant who are citizens of the same State."). Similarly, § 1332 is not satisfied, and original jurisdiction over the "civil action" does not exist, unless *each* plaintiff independently satisfies the amount-in-controversy requirement. *Snyder*, 394 U.S. at 336; *Clark*, 306 U.S. at 589. Because the complaint in this case fails this requirement, original jurisdiction over the "civil action" is absent and § 1367 is inapplicable.

[12] The dissent argues that a single claim is sufficient to create original jurisdiction over a "civil action" under § 1332 because courts are not normally required to dismiss the entire action when a jurisdictional flaw is discovered. Rather, a court may simply dismiss the offending parties.

that the statute "appears to reject the notion that a single, jurisdictionally sufficient claim will support the exercise of plenary pendent jurisdiction in diversity matters").

Second, our reading of § 1367's "original jurisdiction" requirement is consistent with the settled meaning of identical language in 28 U.S.C. § 1441, the removal statute. Section 1441, like § 1367, applies only if the "civil action" in question is one "of which the district courts . . . have original jurisdiction." § 1441(a). Relying on that language, the Supreme Court has interpreted § 1441 to prohibit removal unless the entire action, as it stands at the time of removal, could have been filed in federal court in the first instance. *See, e.g., Syngenta Crop Protection, Inc. v. Henson*, 537 U.S. 28, 33 (2002); *Okla. Tax Comm'n v. Graham*, 489 U.S. 838, 840 (1989) (per curiam). Section 1441 has thus been held to incorporate the well-pleaded complaint rule, *see City of Chicago*, 522 U.S. at 163; the complete diversity rule, *see Caterpillar, Inc. v. Lewis*, 519 U.S. 61, 73 (1996); and rules for calculating the amount in controversy, *see St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 291-92 (1938). By the time Congress enacted § 1367 in 1990, this interpretation of § 1441(a) was well-settled. *See, e.g., Okla. Tax Comm'n*, 489 U.S. at 840; *Caterpillar Inc. v. Williams*,

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See, e.g., Newman-Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826, 836 (1989) (courts of appeals may cure jurisdictional defects by dismissing dispensable nondiverse parties); *Clark*, 306 U.S. at 590 (dismissing parties who failed to meet the amount-in-controversy requirement but retaining jurisdiction over the party that satisfied it). This argument confuses the *existence* of original jurisdiction with remedies for its absence. Original jurisdiction over the "civil action" may be *achieved* by dismissing certain dispensable parties. But as long as the offending parties are present, original jurisdiction over the "civil action" cannot exist, *see Schacht*, 524 U.S. at 389 ("The presence of [a] nondiverse party automatically destroys original jurisdiction . . . ."), regardless of whether any single claim in the action would satisfy § 1332 by itself.

482 U.S. 386, 392 (1987); *Met. Life Ins. Co. v. Taylor*, 481 U.S. 58, 63 (1987); *Franchise Tax Bd. v. Constr. Laborers Vacation Tr.*, 463 U.S. 1, 27 (1983).

Given this background, it is significant that Congress included the same "original jurisdiction" requirement in § 1367. *See Erlenbaugh v. United States*, 409 U.S. 239, 243-44 (1972) (noting that "practical experience in the interpretation of statutes [indicates that] a legislative body generally uses a particular word with a consistent meaning in a given context"). Congress purposefully employed language in § 1367(a) that had already been interpreted in § 1441 to incorporate the traditional doctrines of federal jurisdiction—including *Strawbridge* and *Clark*.

Another advantage of our interpretation of § 1367 is that it aligns statutory supplemental jurisdiction with the judicially developed doctrines of pendent and ancillary jurisdiction as they existed prior to *Finley*. Congress took the opportunity in § 1367 to codify the doctrines of pendent and ancillary jurisdiction under a single heading. *See City of Chicago*, 522 U.S. at 165; *Iglesias v. Mut. Life Ins. Co.*, 156 F.3d 237, 241 (1st Cir. 1998). Neither of those doctrines permitted a diversity plaintiff to circumvent the requirements of § 1332 simply by joining her claim in an action brought by another, jurisdictionally competent diversity plaintiff.[13] We see no

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[13] The doctrine of pendent jurisdiction, which allowed plaintiffs to assert non-federal claims in federal court, was applicable only in federal-question cases. *See* 7C Wright, Miller, & Kane, *Fed. Prac. & Proc.* § 1917 n.7 (2d ed. 2004); *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 348-49 (1988); *see also Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 370 (1978) (noting that the lower court had erred in relying on *Gibbs*, a pendent jurisdiction case, because the case before the court did not involve a federal claim). Ancillary jurisdiction, by contrast, applied in both federal-question and diversity cases, but that doctrine "typically involve[d] claims *by a defending party* haled into court against his will." *Kroger*, 437 U.S. at 376 (emphasis added); *see also id.* at n.18. Moreover, the Court in *Kroger* made clear that a party could not resort to

indication in § 1367 that Congress wanted to alter that rule. Notably, where Congress *did* intend to alter existing law in § 1367, it took pains to do so directly and unequivocally. *See* § 1367(a) (repudiating *Finley* in a separate sentence: "Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.").

Finally, our interpretation explains the omission of Rule 20 plaintiffs from § 1367(b). This was the "apparent incongruity" on which the Seventh Circuit relied in *Stromberg*. *See* 77 F.3d at 932. *Strombĕrg* reasoned that because Congress omitted claims by Rule 20 plaintiffs from § 1367(b), it must have intended to allow permissively joined plaintiffs to bring claims that § 1332 would not otherwise support. *Id.* at 931-32. In our view, there is a better explanation. The permissive joinder of a nondiverse party, whether in the original complaint or afterwards, destroys complete diversity and thus deprives the court of "original jurisdiction." *Schacht*, 524 U.S. at 389; *Am. Fiber & Finishing*, 362 F.3d at 140-41. Likewise, "original jurisdiction" is destroyed by the joinder of a Rule 20 plaintiff who, like Beatriz's family members, cannot satisfy the amount-in-controversy requirement. *See Snyder*, 394 U.S. at 336-37 (noting that the requirement that each plaintiff must separately pass the amount-in-controversy bar derives from § 1332).[14] Supplemental jurisdiction in such a case fails at

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ancillary jurisdiction where doing so would effectively circumvent the complete diversity rule. *See id.* at 375-77.

[14] The Supreme Court has not specifically held that plaintiffs joined under Rule 20 *after* the filing of the original complaint must also satisfy the amount-in-controversy requirement. That result, however, is probably inevitable in light of *Clark* and *Snyder*, for "[o]therwise an appellate court could be called on to sustain a decree in favor of a plaintiff who had not shown that his claim involved the jurisdictional amount, even though the suit were dismissed on the merits as to the other

the threshold of § 1367(a), so there was simply no need for Congress to include Rule 20 plaintiffs in subsection (b) in order to preserve *Clark* or *Strawbridge*. *See* Pfander, *supra*, at 148.

A few courts have rejected this reading of § 1367 on the ground that nothing in the statute suggests the phrase "original jurisdiction" has a different meaning in diversity cases than in federal-question cases. *See, e.g., Gibson v. Chrysler Corp.*, 261 F.3d 927, 936 (9th Cir. 2001); *Payne v. Goodyear Tire & Rubber Co.*, 229 F. Supp. 2d 43, 50-51 (D. Mass. 2002). That argument is misplaced. The requirement of "original jurisdiction" in § 1367(a) has the same meaning in every case: that some underlying statutory grant of original jurisdiction must be satisfied. What differs between federal question and diversity cases is not the meaning of "original jurisdiction" but rather the requirements of sections 1331 and 1332. Under § 1331, the sole issue is whether a federal question appears on the face of the plaintiff's well-pleaded complaint; the identity of the parties and the amounts they stand to recover are largely irrelevant. Section 1332, by contrast, predicates original jurisdiction on the identity of the parties (*i.e.*, complete diversity) and their ability to meet the amount-in-controversy requirement. So the "original jurisdiction" language in § 1367 operates differently in federal-question and diversity cases not because the meaning of that term varies, but because the requirements of the underlying statutes are different.

Nor does this reading of the statute make § 1367(b) superfluous. By itself, § 1367(a) would authorize a wide

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plaintiffs who had established the jurisdictional amount for themselves." *Clark*, 306 U.S. at 590; *cf. Am. Fiber & Finishing, Inc. v. Tyco Healthcare Group, LP*, 362 F.3d 136, 140-41 (1st Cir. 2004) (addition of a non-diverse party after filing of original complaint destroyed diversity jurisdiction).

variety of supplemental claims in diversity cases—counterclaims by defendants, cross-claims among plaintiffs, claims by and against intervenors, and so on. Section § 1367(b) is important because it ensures that this authorization does not functionally undermine the requirements of § 1332. Suppose, for example, that the defendant in a diversity case impleads a nondiverse party under Fed. R. Civ. P. 14. Section 1367(b) would prevent the plaintiff from asserting a non-federal claim against the impleaded party. This example, of course, is *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365 (1978), in which the Supreme Court held that permitting ancillary (now supplemental) jurisdiction over such a claim would allow diversity plaintiffs to "defeat the statutory requirement of complete diversity by the simple expedient of suing only those defendants who were of diverse citizenship and waiting for them to implead nondiverse defendants." *Id.* at 374. Section 1367(b) codifies *Kroger's* anti-circumvention rationale, not merely as against parties impleaded under Rule 14, but in a variety of situations in which "original jurisdiction" may technically exist but the exercise of supplemental jurisdiction "would be inconsistent with the jurisdictional requirements of section 1332." *See* Rowe, Burbank, & Mengler, *A Coda on Supplemental Jurisdiction*, 40 Emory L.J. 993, 995 (1991) (explaining that subsection (b) implements *Kroger's* rationale). Nothing about our interpretation of § 1367(a) obviates this provision.

Admittedly, our reading of § 1367 is not perfect. One difficulty is that while § 1367(b) does not mention Rule 20 plaintiffs, it does refer to "claims by persons proposed to be joined as plaintiffs under Rule 19"—a reference that is technically unnecessary under our reading of the statute, since the joinder of a nondiverse party as an indispensable plaintiff would likewise destroy original jurisdiction under

§ 1332.[15] *See, e.g., Gonzalez v. Cruz*, 926 F.2d 1, 5 (1st Cir. 1991). And, on policy grounds, there are certainly litigation efficiencies to be gained by an interpretation of § 1367 that would permit Beatriz's family members' claims to proceed in federal court alongside her own. *See Stromberg*, 77 F.3d at 932.

But no reading of § 1367 is perfect—the alternative approach embodied in *Stromberg*, for example, accords no significance to Congress's use of the term "original jurisdiction." In light of the historical and legal context to Congress's enactment of § 1367, including the settled interpretation of § 1441 and the established limits on pendent and ancillary jurisdiction, we conclude that Congress intended to preserve the *Clark* anti-aggregation rule by requiring that the district courts must have "original jurisdiction" over the "civil action" before supplemental jurisdiction will lie.

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[15] Congress may have included the reference to Rule 19 plaintiffs simply to be clear that a plaintiff joined as an indispensable party under Rule 19 is in exactly the same situation as one who intervenes as of right under Rule 24(a). Before the enactment of § 1367, ancillary jurisdiction worked differently under Rules 19 and 24. *See generally* Rowe, Burbank, & Mengler, *Congress Accepts Supreme Court's Invitation to Codify Supplemental Jurisdiction*, 74 Judicature 213, 215 (Dec./Jan. 1991) (describing the identical treatment of plaintiffs under Rules 19 and 24 as the "one modest but significant way" in which § 1367(b) was intended to alter prior law).

Similarly, others have offered explanations for the reference in § 1367(b) to claims *against* persons made parties under Rule 19 or 20. *See, e.g.*, Pfander, *Supplemental Jurisdiction and Section 1367: The Case for a Sympathetic Textualism*, 148 U. Pa. L. Rev. 109, 144-46 (1999) (Rule 20 defending parties); Rowe, Burbank, & Mengler, *Compounding or Creating Confusion About Supplemental Jurisdiction? A Reply to Professor Freer*, 40 Emory L.J. 943, at 957-58 (1991) (hereinafter Rowe et al., *Compounding or Creating Confusion)* (Rule 19 defending parties).

b. *Section 1367 and the Complete Diversity Rule*

There is a further reason why we reject the alternative reading of § 1367 set out in the Seventh Circuit's opinion in *Stromberg*. As we have said, *Stromberg's* reading of the statutory text is, while imperfect, at least plausible. Yet it also has surprising and far-reaching consequences: if § 1367 permits the permissive joinder of plaintiffs who cannot meet the amount-in-controversy requirement, then it also permits the joinder of non-diverse plaintiffs. Nothing in the statute distinguishes between the *Clark* amount-in-controversy requirement and the complete diversity rule in *Strawbridge*. So if *Stromberg's* interpretation of § 1367 is correct, Congress overturned nearly 200 years of case law interpreting § 1332 and authorized a potentially huge expansion of the federal docket. Moreover, it did so not by amending the diversity statute itself, but instead by failing to mention Rule 20 plaintiffs in § 1367(b).[16]

We do not think Congress intended § 1367 to work such a revolution in the law of diversity jurisdiction. *Cf. Whitman*

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[16] *Stromberg* itself recognized that "[s]upplemental jurisdiction has the potential to move from complete to minimal diversity." 77 F.3d at 932. Nevertheless, the court concluded that § 1367(b) is adequate to protect the interests served by the *Strawbridge* complete diversity rule. *Id.* Like many commentators, we disagree. *See, e.g.*, Fallon, Meltzer, & Shapiro, *Hart & Wechsler's The Federal Courts and The Federal System* 1491 (5th ed. 2003) (describing the omission of Rule 20 plaintiffs from § 1367(b) as "puzzling" because it allows plaintiffs "to circumvent the complete diversity requirement of § 1332"); Gold, Note, *Supplemental Jurisdiction over Claims by Plaintiffs in Diversity Cases: Making Sense of 28 U.S.C. § 1367(b)*, 93 Mich. L. Rev. 2133, 2167 n.140 (1995) (the omission of Rule 20 plaintiffs must be "inadvertent[ ]" because a literal reading of § 1367(b) "would allow plaintiffs to strategically circumvent the complete diversity requirement"); Rowe et al., *Compounding or Creating Confusion, supra*, at 961 n.91 (describing § 1367(b)'s silence about Rule 20 plaintiffs as a "potentially gaping hole in the complete diversity requirement").

v. Am. Trucking Assns., 531 U.S. 457, 467-68 (2001) ("Congress . . . does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes."). Congress has long maintained a policy of *restricting* diversity jurisdiction, not expanding it, chiefly by raising the amount-in-controversy bar.[17] Indeed, the same congressional Federal Courts Study Committee that proposed overturning *Finley* and codifying supplemental jurisdiction also proposed *eliminating* most forms of diversity jurisdiction. *See* Federal Courts Study Committee, *Report of the Federal Courts Study Committee* 39 (1990) ("We believe that diversity jurisdiction should be virtually eliminated. . . . [N]o other step will do anywhere nearly as much to reduce federal caseload pressures and contain the growth of the federal judiciary."). Congress did not accept that proposal, to be sure, but that hardly suggests it wanted to *expand* diversity jurisdiction. On the contrary, only a few years after enacting § 1367, Congress again raised the amount-in-controversy bar in an effort to reduce the diversity caseload in the federal courts. *See* Federal Courts Improvement Act of 1996, Pub. L. No. 104-317, § 205, 110 Stat. 3847 (raising the minimum amount in controversy from $50,000 to $75,000). The Supreme Court, too, has repeatedly admonished that in light of the burgeoning federal

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[17] In 1887, the minimum amount in controversy was $2,000. *See* Act of March 3, 1887, 24 Stat. 552. Since that time, Congress has repeatedly raised, and never lowered, the required sum. *See* Act of March 3, 1911, 36 Stat. 1091 (raising the minimum amount in controversy to $3,000); Act of July 25, 1958, Pub. L. No. 85-554, § 2, 72 Stat. 415 (raising the minimum amount to $10,000); Judicial Improvements and Access to Justice Act, Pub. L. No. 100-702, § 201, 102 Stat. 4642 (1988) (raising the minimum amount to $50,000); Federal Courts Improvement Act of 1996, Pub. L. No. 104-317, § 205, 110 Stat. 3847 (raising the minimum amount to $75,000). We leave aside the special case of class actions. *See infra* note 19.

caseload, diversity jurisdiction must be narrowly construed. *See, e.g., Snyder*, 394 U.S. at 340-41; *City of Indianapolis v. Chase Nat'l Bank*, 314 U.S. 63, 76 (1941); *Healy v. Ratta*, 292 U.S. 263, 270 (1934).

Against this background, it is implausible to us that Congress undermined *Strawbridge* and overturned *Clark* by such an unlikely and obscure device as the omission of Rule 20 plaintiffs from § 1367(b). *Nixon v. Mo. Mun. League*, 124 S. Ct. 1555, 1564 (2004) (refusing to adopt a textually plausible interpretation of a statute because it was "farfetched that Congress meant . . . to start down such a road in the absence of any clearer signal"); *Chisom v. Roemer*, 501 U.S. 380, 396 & n.23 (1991) ("[I]f Congress had such an intent, Congress would have made it explicit in the statute, or at least some of the Members would have identified or mentioned it . . . . Congress' silence in this regard can be likened to the dog that did not bark.").

Moreover, Congress has continued to regard *Strawbridge* as good law even after § 1367. Since 1990, Congress has enacted at least two statutes limiting the rule of complete diversity. Each time, Congress has done so clearly and conspicuously, carefully circumscribing the situations in which *Strawbridge* will not apply. *See* Multiparty, Multiforum Trial Jurisdiction Act of 2002, Pub. L. No. 107-273, § 11020(b)(1)(A), 116 Stat. 1758 (codified at 28 U.S.C. § 1369) (granting the district courts original jurisdiction over "any civil action involving minimal diversity" between adverse parties arising from any single accident in which 75 natural persons died, and further defining "minimal diversity" in the case of both natural and corporate parties);[18]

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[18] The dissent points to the Multiparty, Multiforum Trial Jurisdiction Act (MMTJA) as evidence that Congress is backing away from its long history of restricting diversity jurisdiction. We disagree. Our conclusion is that Congress is keenly aware of the limits on diversity jurisdiction and

Y2K Act, Pub. L. No. 106-37, § 15(c), 113 Stat. 185 (1999) (codified at 15 U.S.C. § 6614(c)) (granting the district courts original jurisdiction over "any Y2K action that is brought as a class action," except where a "substantial majority" of the plaintiff class is from the same state as the "primary" defendants and the claims in the action will be governed primarily by the law of that state).

Congress thus knows how to limit *Strawbridge* clearly when it wishes, and it would have had little reason to enact these statutes if it believed that it had already undermined the complete diversity rule in the supplemental jurisdiction statute. Plainly it did not so believe, and that understanding informs our choice among plausible interpretations of § 1367. *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 143 (2000) ("At the time a statute is enacted, it may have a range of plausible meanings. Over time, however, subsequent acts can shape or focus those meanings. . . . This is particularly so where the scope of the earlier statute is broad but the subsequent statutes more specifically address the topic at hand.").

c. *Legislative History of § 1367*

Finally, the legislative history of § 1367 strongly corroborates the conclusion that Congress did not intend to repudiate *Clark* or *Strawbridge*. Resort to legislative history is appropriate where, as here, the text of a statute is susceptible to two textually plausible interpretations. *Lapine v. Town of Wellesley*, 304 F.3d 90, 97 (1st Cir. 2002); *Hernandez-Colon v. Sec. of Labor*, 835 F.2d 958, 960 (1st Cir. 1988). That is particularly true in this case, given that our sister circuits have reached conflicting answers to the same question based on the same statutory text. *Cf. In re*

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expects those limits to apply except where, as in the MMTJA, it specifically and unambiguously alters them.

Bankvest Capital Corp., 360 F.3d 291, 297 (1st Cir. 2004) ("[W]e are hard-pressed to endorse any 'plain meaning' argument where, as here, other federal courts have reached conflicting answers to the same question based on the same 'plain' language.").

The legislative history of § 1367 is somewhat muddled in its details, but one fact is certain: Congress did not believe that § 1367 would make significant changes to the law of diversity jurisdiction. The House Judiciary Committee report—the only congressional report concerning the provision that became § 1367—stated that the bill was intended to "essentially restore the pre-*Finley* understandings of the authorization for and limits on . . . supplemental jurisdiction." H. Rep. No. 101-734, at 28 (Sept. 10, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6860, at 6874. The same report made clear that Congress anticipated no sweeping changes in the operation of § 1332: "In diversity cases, the district courts may exercise supplemental jurisdiction, except when doing so would be inconsistent with the jurisdictional requirements of the diversity statute." *Id.*

The bill's sponsors similarly did not believe that § 1367 would alter the fundamental rules of diversity jurisdiction. Senator Grassley stated that the bill did not "represent major changes in the law." 136 Cong. Rec. at S17578 (Oct. 27, 1990). He and other sponsors repeatedly described the bill as "noncontroversial." *See, e.g.*, *id.*; *id.* at H13313 (Oct. 27, 1990) (statement of Rep. Kastenmeier). And Congress treated it that way—committee hearings on the bill lasted only one day. *See* Rowe, Burbank, & Mengler, *supra*, at 1005 (describing the process afforded to the bill in Congress as "meager"). At no point in the legislative process did any member of Congress suggest that § 1367 would overturn

Clark, undercut the complete diversity rule or otherwise dramatically expand federal diversity jurisdiction.[19]

III.

We hold that § 1367 does not authorize jurisdiction over Beatriz's family members' claims. Those claims would have been barred under *Clark* before 1990, and we conclude that Congress did not upset that rule when it overturned *Finley* and codified the prior law of pendent and ancillary jurisdiction in § 1367.[20]

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[19] We express no view on the related but distinct issue of whether § 1367 overturns the Supreme Court's holding in *Zahn v. International Paper Co.*, 414 U.S. 291 (1973), that each class member in a diversity-only class action must meet the jurisdictional amount in controversy. *See id.* at 301. The application of § 1367 to diversity-only class actions is a different problem for several reasons, including because (1) the complete diversity rule applies with diminished force in the class-action context, *see Supreme Tribe of Ben-Hur v. Cauble*, 255 U.S. 356, 366 (1921); (2) section 1367(b) does not mention Rule 23 at all, while it mentions Rule 20 at least as to defending parties; and (3) there are conflicting signals in the legislative history as to whether Congress intended to overrule *Zahn*, *see Payne*, 229 F. Supp. 2d at 51-52 (summarizing the "murk[y]" legislative history on this point).

[20] The dissent argues that Congress could not have intended this result because it is too similar to the outcome in *Finley*, which Congress meant to overturn. The analogy to *Finley*, however, is both inaccurate and unpersuasive. *Finley* involved an exclusively federal claim under the FTCA; this case is predicated only on diversity. That is a critical difference: the rules of pendent jurisdiction have always been more flexible in federal-question cases than in diversity cases, *see supra* note 13, no doubt to facilitate a federal forum for claims arising under federal law. The federal interest in Beatriz's family members' ability to assert their state-law claims in federal court is much more attenuated.

In *Finley*, moreover, there was no forum available in which the federal plaintiff could assert all of her claims. *See Finley*, 490 U.S. at 555- 556. In this case, by contrast, such a forum is readily available: the courts of Puerto Rico. It was the plaintiffs who chose to sue in federal court. Against that background, the dissent's judicial efficiency arguments ring hollow. *Cf. Kroger*, 437 U.S. at 376 ("A plaintiff cannot complain if

The judgment of the district court is ***affirmed*** as to Beatriz's family members. As to Beatriz, the judgment is ***vacated*** and the case is ***remanded***. On remand, Beatriz may elect to proceed alone in federal court or, if she wishes, voluntarily dismiss her complaint so that she and her family may re-file in the Puerto Rico courts.

TORRUELLA, Circuit Judge (Concurring in part, dissenting in part II.B).

I concur in part II.A of the majority opinion. I also agree that courts are wise to tread carefully when deciding cases, such as this, where a court must interpret a statute defining the parameters of its own powers. My agreement with the majority opinion, however, ends there.

In an attempt to limit diversity jurisdiction, the majority opinion mixes a "sympathetic textualist" approach to statutory interpretation with a dash of legislative intent to reach a conclusion that is contrary to the plain language of § 1367. The irony of the majority opinion is that it espouses the virtue of legislative intent, yet adopts a reading of § 1367 that was never articulated by any Congressperson or their staff, by any judge or jurist, nor by any academics, or, most importantly, by any of the very drafters of the statute from the time the statute was adopted in 1990, until such "intent" was just espoused in 1998. Section 1367 was the law for over seven years before a new alternative interpretation of § 1367 was proposed by Professor Pfander and adopted by the Tenth Circuit. *See Leonhardt v. W. Sugar Co.*, 160 F.3d 631, 639 n.6 (10th Cir. 1998). This dubious approach has now been adopted by this circuit, despite the fact that it ignores the plain meaning of § 1367, causes the same word

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ancillary jurisdiction does not encompass all of his possible claims in a case such as this one, since it is he who has chosen the federal rather than the state forum . . . .").

in the statute to have two meanings, and makes an entire provision of § 1367 meaningless.

It is because I believe that a court's role is limited to applying the statute, not changing the statute, that I respectfully dissent. In doing so, I join the majority of our sister circuits that have interpreted 28 U.S.C. § 1367 to grant a district court jurisdiction to hear a plaintiff's claim that does not meet the amount-in-controversy, if a co-plaintiff's claim satisfies the amount-in-controversy requirement.

I. *Joinder and class actions*

Before analyzing § 1367 and its meaning, one observation must be made. The majority begins its analysis of § 1367 by noting that our sister circuits are evenly split on the issue of whether § 1367 allows a plaintiff who does not independently meet the amount-in-controversy requirement of § 1332 to remain in federal court. This statement is misleading. While it is true that only two circuit courts, the Third and Seventh Circuits, have addressed § 1367's applicability outside the context of a class action, in reality, five circuit courts have interpreted § 1367 to allow a plaintiff who does not independently meet the amount-in-controversy requirement of § 1332 to remain in federal court, whereas three circuit courts require them to take their claims to state court.[21] Rather than addressing these cases and their

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[21] *Compare Allapattah Serv., Inc. v. Exxon Corp.*, 333 F.3d 1248 (11th Cir. 2003) (holding supplemental jurisdiction exists in a diversity class action as long as one named plaintiff satisfies the amount-in-controversy requirement); *Gibson v. Chrysler Corp.*, 261 F.3d 927 (9th Cir. 2001) (same), *cert. denied*, 534 U.S. 1104 (2002); *Rosmer v. Pfizer Inc.*, 263 F.3d 110 (4th Cir. 2001) (same), *cert. dismissed*, 536 U.S. 979 (2002); *Stromberg Metal Works, Inc.* v. *Press Mech. Inc.*, 77 F.3d 928 (7th Cir. 1996) (holding supplemental jurisdiction exists over a party who failed to meet the amount-in-controversy requirement); *In re Abbott Labs.*, 51 F.3d 524 (5th Cir. 1995) (holding supplemental jurisdiction exists in a diversity class action as long as one named plaintiff satisfies the amount-in-controversy requirement), *with Trimble v. Asarco, Inc.*, 232 F.3d 946

arguments, the majority opinion casts them aside by arguing that the class action context differs from the Rule 20 joinder context. Such a characterization is misguided for several reasons.

First, the majority opinion fails to acknowledge that for § 1367 purposes, *Clark* and *Zahn* stand for the same principle. In *Clark v. Paul Gray, Inc.*, the Supreme Court held that each plaintiff's claim must meet the amount-in-controversy requirement. 306 U.S. 583 (1939). In *Zahn v. Int'l Paper Co.*, the Supreme Court held that each class member's claim must meet the amount-in-controversy requirement. 414 U.S. 291, 301 (1973). Thus, *Clark* "is the nonclass analog to *Zahn*. Section 1367, on its face, overrules *Clark*, just as it overrules *Zahn*." Richard D. Freer, *The Cauldron Boils: Supplemental Jurisdiction, Amount in Controversy, and Diversity of Citizenship Class Actions*, 53 Emory L.J. 55, 58 n.19 (2004).

This position has been adopted by every circuit court to consider the issue. As the Seventh Circuit noted, " § 1367 does not distinguish class actions from other cases . . . [and section 1367] affects *Clark* and *Zahn* equally." *Stromberg Metal Works*, 77 F.3d at 931.[22] Similarly, the Third Circuit, the only circuit with which the majority aligns itself, admits

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(8th Cir. 2000) (holding supplemental jurisdiction does not exist in class action diversity case); *Meritcare Inc. v. St. Paul Mercury Ins. Co.*, 166 F.3d 214 (3d Cir. 1999) (holding supplemental jurisdiction does not apply to a diversity case); *Leonhardt*, 160 F.3d 631 (holding supplemental jurisdiction does not exist in class action diversity case).

[22] *See also In re Brand Name Prescription Drugs Antitrust Litigation*, 123 F.3d 599, 607 (7th Cir. 1997) (agreeing that § 1367 allows supplemental jurisdiction in either a class action or joinder situation); *Rosmer*, 263 F.3d at 122-29 (Motz, J., dissenting) (interpreting the majority's interpretation of § 1367 to apply to Rule 20 joinder as well as class actions).

that "the line of cases from *Pinel* to *Zahn* applies equally to joinder cases and class action." *Meritcare Inc.*, 166 F.3d at 218.[23] The purpose of *Zahn* was to clarify that, for amount-in-controversy purposes, the proposition established in *Clark* applies in the class action context. *See Zahn*, 414 U.S. at 301; *Snyder v. Harris*, 394 U.S. 332, 335-37 (1969) (treating class actions the same as cases with joined plaintiffs for purposes of aggregation rules).

Second, if a distinction were to be made between class actions and joinder, the distinction would favor allowing supplemental jurisdiction in joinder situations, and not in class action situations, as "it is hard to avoid remarking that allowing thousands of small claims into federal court via the class device is a substantially greater expansion of jurisdiction than is allowing a single pendent party." *Stromberg Metal Works*, 77 F.3d at 931. Thus, it is "easy to imagine wanting to overturn *Clark* but not *Zahn*; it is much harder to imagine wanting to overturn *Zahn* but not *Clark*, and we have no reason to believe that Congress harbored such a secret desire." *Id.*

II. *The plain meaning of § 1367*

When interpreting a statute, the starting point is the statute's text. *See Bennett v. City of Holyoke*, 362 F.3d 1, 9 (1st Cir. 2004). Section 1367(a) provides that district courts shall have supplemental jurisdiction over claims that form part of the same case or controversy as any civil action of which the court has original jurisdiction.[24] For diversity

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[23] *See also*, Richard D. Freer, *Toward a Principled Statutory Approach to Supplemental Jurisdiction in Diversity of Citizenship Cases*, 74 Ind. L.J. 5, 21-22 (1998).

[24] Section 1367(a) states: "(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that

purposes, a district court has original jurisdiction if the plaintiff's citizenship differs from the defendant's and the claim exceeds $75,000. *See* 28 U.S.C. § 1332.

Section 1367(b) creates exceptions to § 1367(a) if (1) jurisdiction is based on diversity (§ 1332), (2) the plaintiff is the party seeking to assert supplemental jurisdiction against persons made parties under Rule 14 (third-party practice), 19 (mandatory joinder), 20 (permissive joinder), or 24 (intervention) of the Federal Rules of Civil Procedure or persons proposed to be joined as plaintiffs or intervene as plaintiffs under Rules 19 and 24 respectively, and exercising jurisdiction over the supplemental claims would be inconsistent with the statutory requirements of diversity jurisdiction under § 1332.[25]

Section 1367(c) creates further exceptions, notably awarding a district court discretion to decline supplemental jurisdiction if the supplemental jurisdiction claim predominates over the claim that has original jurisdiction.[26]

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they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties."

[25] Section 1367(b) states: "In any civil action of which the district courts have original jurisdiction founded solely on [diversity], the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14 [third-party practice], 19 [mandatory joinder], 20 [permissive joinder], or 24 [intervention] of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332."

[26] Section 1367(c) states: "(c) The district courts may decline to exercise supplemental jurisdiction over a claim . . . if-- (1) the claim raises a novel or complex issue of State law, (2) the claim substantially predominates over the claim or claims over which the district court has original

Applying § 1367(a) to the present case is straightforward. Before supplemental jurisdiction can apply, a district court must have original jurisdiction over a claim. In this case, the district court has jurisdiction over Beatriz's claims because Beatriz is a citizen of a different state than Star-Kist and has alleged claims for which it is not a legal certainty that the damages are less than $75,000. *See* 28 U.S.C. § 1332. Since the district court has jurisdiction over Beatriz's claims, it may assert supplemental jurisdiction over Beatriz's family members' claims if they arise out of the same case or controversy. *See* 28 U.S.C. § 1367(a). There is no dispute that all of the claims in this case arise out of the same case or controversy.

Supplemental jurisdiction may attach unless one of the exceptions applies. *See* 28 U.S.C. § 1367(b) & (c). The exceptions pertaining to Federal Rule of Civil Procedure 14 (third-party practice), Rule 19 (mandatory joinder), Rule 20 (permissive joinder), or Rule 24 (intervention) are inapplicable to this case as there are no claims by plaintiffs against persons made parties under those rules. The further exception pertaining to Federal Rule of Civil Procedure 19 does not apply as Beatriz's family members are not indispensable parties. The last exception pertaining to Federal Rule of Civil Procedure Rule 24 does not apply as the family members are not seeking to intervene. Thus, none of the exceptions in § 1367(b) apply.

The exceptions in § 1367(c) also do not apply. The claims of Beatriz's family members do not raise novel or complex issues of Commonwealth law, their claims do not substantially predominate Beatriz's claims, and there do not

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jurisdiction, (3) the district court has dismissed all claims over which it has original jurisdiction, or (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction."

tend to be any compelling reasons for declining jurisdiction. Thus, a plain, straightforward reading of § 1367 results in the district court having jurisdiction over Beatriz's family members' claims.

III. *The majority opinion's alternative approach*

The majority opinion disagrees with this conclusion, however, by arguing that the term "original jurisdiction" in § 1367(a) has two distinct meanings. In federal-question cases, § 1367 applies if *at least one* claim qualifies for "original jurisdiction." But, in diversity cases, the majority argues, § 1367 applies only if *all* claims qualify for original jurisdiction. This contrived reading of § 1367 is wrong for several reasons.

First, the majority's interpretation of § 1367(a) violates "the basic canon of statutory construction that identical terms within an Act bear the same meaning." *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 479 (1992). In this case, not only does the majority opinion define identical terms differently, it defines the same term differently. There is "nothing in the text of subsection (a) to suggest, even remotely, that there is such a difference in meaning." *See Gibson*, 261 F.3d at 936; *Rosmer*, 263 F.3d at 115-16.

The majority opinion appears to be oblivious to this blatant violation of the rules of statutory construction because it believes Congress "*presumptively* incorporated into § 1367 the longstanding, judicially developed doctrines that determine whether those statutes confer 'original jurisdiction.'" (emphasis added). In addition to there being no authority for this "presumption," the majority incorrectly applies another longstanding doctrine that accompanies original jurisdiction to reach that conclusion. For supplemental jurisdiction purposes, the majority contends that the term "original jurisdiction" in a diversity case requires that *every* claim meet the requirement of "original jurisdiction." In stating this principle, the majority overlooks the process by which a court determines if "original

jurisdiction" exists. Both § § 1331 and 1332 "confer original jurisdiction over designated 'civil actions' . . . [which] consist of a cluster of claims, . . . [and which] the rules of federal subject-matter jurisdiction apply on a claim-by-claim basis." John B. Oakley, *Integrating Supplemental Jurisdiction and Diversity Jurisdiction: A Progress Report on the Work of the American Law Institute*, 74 Ind. L.J. 25, 41-42 (1998); *see also* Freer, 53 Emory L.J. at 82-83. One claim's failure to qualify for original jurisdiction does not mean that all claims fail to qualify for original jurisdiction. Whether the case is filed in federal court or removed to federal court, "it is incontrovertible that [§ 1332] . . . requires only the dismissal of the jurisdictionally insufficient claims, not the entire action." Oakley, 74 Ind. L.J. at 47; Freer, 53 Emory L.J. at 82-83; *see also Clark*, 306 U.S. at 590 (maintaining jurisdiction over one claim that met the amount-in-controversy and dismissing the claims that failed to meet the amount-in-controversy). Thus, the fact that a case contains claims that destroy diversity does not prevent the court from maintaining jurisdiction over the claims that qualify for "original jurisdiction." *See* Oakley, 74 Ind. L.J. at 47; *Clark*, 306 U.S. at 590; *see also* Fed. R. Civ. P. 21; *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 834-35 (1989) (holding that courts of appeals have the authority to dismiss a dispensable non-diverse party).

The very language of § 1367 incorporates this concept. Section 1367(a) states that a court shall have supplemental jurisdiction over all other claims that are "so related to claims in the action." The "other claims" join the related claims (those qualifying for original jurisdiction) as part of the civil action.

In this case, Beatriz's claims qualified for "original jurisdiction." On remand, it will be undisputed that Beatriz's claims constitute "a civil action of which the district courts have original jurisdiction." *See* 28 U.S.C. § 1367. Once the majority opinion concluded that the district court had "original jurisdiction" over the "civil action" consisting of

Beatriz's claims, it should have turned to § 1367's statement that "in any civil action of which the district courts have original jurisdiction [(Beatriz's claims)], the district courts shall have supplemental jurisdiction over all other [related] claims [(Beatriz's family's claims)]." *Id.* Instead of taking this step, the majority opinion attempts to redefine the practice of interpreting § 1332 claims to achieve a result contrary to that dictated by § 1367.[27]

Further, the majority's interpretation of § 1367(a) violates "[t]he cardinal principle of statutory construction . . . to give effect, if possible, to every clause and word of a statute, . . . rather than to emasculate an entire section." *United States v. Menasche*, 348 U.S. 528, 538 (1955) (internal quotations and citations omitted). The majority's interpretation of § 1367(a) eviscerates portions of § 1367(b). As the majority is forced to admit, its interpretation of § 1367 makes the Rule 19 exception in § 1367(b) "unnecessary." What the majority does not admit is that its interpretation makes other provisions of § 1367 superfluous. *See* Freer, 53 Emory L.J. at 81. For example, according to the majority's interpretation of § 1367, "original jurisdiction" would not

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[27] The majority attempts to justify its approach by arguing that Congress should have explicitly stated that supplemental jurisdiction exists if one claim supports original jurisdiction. First, such specificity is not required as it is undisputed that one claim can constitute a civil action.

Second, we can argue "could have" or "should have" ad infinitum. If Congress had wanted to limit supplemental jurisdiction in cases such as this, for example, it could have inserted a Rule 20 plaintiff exception into § 1367(b), as it did for other Rules of Civil Procedure. If Congress had done so, the majority would not need to resort to its dubious "sympathetic textualist" interpretation of the statute.

In a case like this, a debate over what Congress could have done is unproductive and unnecessary when a plain reading of the statute produces one clear result: a district court has jurisdiction over supplemental claims if the district court has original jurisdiction over a claim in the civil action.

exist over a claim made by a plaintiff against a non-diverse defendant joined under Rule 20 of the Federal Rules of Civil Procedure. The majority's interpretation cannot be correct, however, because section 1367(b) specifically excepts supplemental jurisdiction over a claim made by a plaintiff against a non-diverse defendant joined under Rule 20. *See Gibson*, 261 F.3d at 936; *Rosmer*, 263 F.3d at 115. The only reason § 1367(b) would contain such an exception is if § 1367(a) provides jurisdiction for joined claims against non-diverse defendants. If, as the majority contends, " 'original jurisdiction' under subsection (a) were determined by looking at all the claims in the complaint, there would have been no jurisdiction under § 1332 (and hence no 'original jurisdiction') in the first place." *Gibson*, 261 F.3d at 936. Thus, the exclusion of supplemental jurisdiction of claims by non-diverse parties joined under Rule 20 would be surplusage.

IV. *Congressional intent & legislative history*

Recognizing that its interpretation of § 1367 results in an "imperfect" reading based on "presumptions," the majority opinion attempts to buttress its position by referring to Congressional intent and legislative history. The majority opinion begins by noting that "Congress has long maintained a policy of restricting diversity jurisdiction." Relying on "long maintained" policy is problematic for several reasons. First, Congressional action in the past sheds little light on what the 101st Congress believed when it passed § 1367. Rather than speculate on what was done in the past, it is more fruitful to look at the actions of the Congress that adopted § 1367. In 1990, the same Congress that passed § 1367 was given the *Report of the Federal Courts Study Committee* which recommended "diversity jurisdiction should be virtually eliminated." This recommendation was *rejected* by Congress. We should not achieve through judicial action what the Federal Courts Study Committee could not convince Congress to achieve. Ultimately, it is not unreasonable to believe that Congress read the plain

language of § 1367, recognized that it allowed diversity jurisdiction for supplemental plaintiffs, and voted for it.

Second, the continued validity of Congress's "long maintained policy" of restricting diversity jurisdiction is called into question by Congress's expansion of federal jurisdiction based upon minimal diversity in the Multiparty Multi-Forum Trial Jurisdiction Act in 2002. *See* 28 U.S.C. § 1369.

Third, and perhaps most convincing is the fact that a proposed amendment achieving the majority's result in this case, that would limit supplemental jurisdiction in Rule 20 & 23 cases has been circulating in Congress since 1998. Freer, 53 Emory L.J. at 58-59. This amendment has done nothing more than circulate for six years. *Id.* Congress has reasonably rejected that view.

To conclude its opinion, the majority cites to an admittedly "muddled" legislative history for support. The legislative history, however, is so sparse and contradictory that it neither supports nor undermines the majority opinion's conclusions. Section 1367 was passed by the House of Representatives with no floor discussion on any part of the statute. Freer, 53 Emory L.J. at 73. The Senate voted on § 1367 with little debate. *Id.* The bill was introduced by Senator Grassley as "noncontroversial."

What little legislative history surrounds § 1367 is internally contradictory. For example, § 1367 "was said to be part of the 'less controversial' proposals of the . . . Federal Courts Study Committee . . . [but] that Committee never drafted a statute on supplemental jurisdiction." Richard D. Freer, *Compounding Confusion and Hampering Diversity: Life after Finley and the Supplemental Jurisdiction Statute*, 40 Emory L.J. 445, 471 (1991). Further, despite the Senator's words, and excluding the controversy surrounding supplemental jurisdiction, § 1367 was highly controversial because of its treatment of Rule 19 and its adoption of a proposal that differed substantially from the Federal Court

Study Committee proposal. *See* Christopher M. Fairman, *Abdication to Academia: The Case of the Supplemental Jurisdiction Statute, 28 U.S.C. § 1367*, 19 Seton Hall Legis. J. 157, 164 (1994).

Perhaps the most relevant piece of legislative history is the fact that Congress passed § 1367 in reaction to the Supreme Court's holding in *Finley*, which held that a plaintiff suing the United States in a Federal Tort Claims Act case could not join a defendant, against whom there were only state law claims, without an independent basis for federal jurisdiction. *See Finley v. United States*, 490 U.S. 545 (1989). Had *Finley* not been overturned by § 1367, a plaintiff, such as the one in *Finley*, would have been required to either (1) split the case in two and bring the federal claim in federal court and the state claims in state court, or (2) forsake one of the two claims. To prevent such a result, Congress enacted § 1367.

The majority opinion in this case achieves a result similar to that Congress was trying to avoid by overruling *Finley*. As in *Finley*, the plaintiffs in this case must either (1) pursue Beatriz's claims in federal court and her family's claims in state court, (2) dispose of her family's claims altogether, or (3) pursue all of the claims in state court. The first option leads to a waste of judicial resources and a potential for inconsistent verdicts. The second option deprives Beatriz's family of their day in court. The third option, not present in *Finley*, deprives Beatriz of a federal forum and of her right to a trial by jury, as her case would not receive a jury trial in the Commonwealth courts.[28] As Congress showed by overturning *Finley*, being faced with these options should be avoided.

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[28] The third option is also unrealistic considering judgments in the Commonwealth courts are far below those awarded in the federal courts. *See, e.g., Stewart v. Tupperware Corp.*, 356 F.3d 335 (1st Cir. 2004).

Ultimately, as the majority concedes, the legislative history is muddled and can be used to support or to contradict either position. In the end, the unclear legislative history leaves us where we started: with the text of the statute.

V. *Conclusion*

The majority proposes an interpretation of § 1367 that not one Congressman or drafter of § 1367 ever espoused, much less envisioned. In contrast, I support a plain reading of § 1367 that even the drafters admitted was the correct plain reading of the statute.[29] The majority proposes an interpretation of § 1367 that violates many rules of statutory construction. In contrast, I support a reading of the statute in which words are not required to have double meanings and each phrase has a purpose. Last, the majority's interpretation leads to a waste of judicial resources and the possibility of inconsistent verdicts. In contrast, I support a reading which preserves judicial resources.

I am comforted by and conclude with a statement by the Supreme Court in *Finley*: "Whatever we say regarding the scope of jurisdiction conferred by a particular statute can of course be changed by Congress" or, in this case, by the Supreme Court. *Finley*, 490 U.S. at 556.

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[29] *See* Rowe Jr., Burbank, & Mengler, *Compounding or Creating Confusion About Supplemental Jurisdiction? A Reply to Professor Freer*, 40 Emory L.J. 943, 961 n.91 (1991) (recognizing that the § 1367 left a "potentially gaping hole in the complete diversity requirement").

FILED: July 28, 2002

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MARIA DEL ROSARIO ORTEGA, et al.	*	
Plaintiffs	*	
v.	*	
STAR KIST FOODS, INC.; et al.	*	Civil No. 00-1475(SEC)
DEFENDANTS	*	
* * * * * * * * * * * * *	*	

OPINION AND ORDER

Before the Court is Defendant's motion for summary judgment (Docket # 56). Defendant argues that Plaintiffs have failed to establish the jurisdictional amount necessary to sustain this case in federal court. Plaintiffs have duly opposed said motion (Docket # 64), and Defendant has filed a lengthy reply to the opposition (Docket # 66). Having considered the parties arguments, the Court will **GRANT** Defendant's motion and the case will be **DISMISSED WITHOUT PREJUDICE.**

Factual Background

This is a products liability action arising out of an unfortunate event surrounding an allegedly defective can of Star Kist tuna. The main Plaintiff is a young girl (Beatriz Blanco) who allegedly cut her pinky finger on the can of tuna while having lunch at school. There is little controversy among the parties as to what actually happened afterwards. The girl was taken to the school infirmary, where she was initially assisted by the school nurse. When she arrived at the infirmary, the girl was bleeding from the wound. The

nurse tried to stop the bleeding, cleaned the wound, and called a paramedic who worked at the school. At that point, the girl was crying and appeared anxious and nervous. When the paramedic arrived, he applied a butterfly suture to the wound. The girl was bleeding for somewhere between five (5) and fifteen (15) minutes. The wound was about a quarter of an inch deep, and about three-quarters of an inch long.

The girl's mother (Maria del Rosario Ortega) was at her home when she received a telephone call from the school stating that the girl had cut herself. When she arrived she saw Beatriz on a stretcher at the school's infirmary, crying. Beatriz was already bandaged, and Mrs. Ortega was explained what had happened. She then took Beatriz to the emergency room of the Ashford Presbyterian Hospital, where it was determined that she had no sensation and could not move her finger. At that point, they were told that the finger's tendons and nerves were probably severed, and she had to be referred to a hand specialist, Dr. Segarra. The girl was then sent home for the night, and no medication was prescribed.

The next day, Dr. Segarra performed the surgery on Beatriz's hand, under general anesthesia. After the surgery Beatriz remained in recovery for a while, because she was vomiting considerably due to the anesthesia. Later that same day, Beatriz was discharged from the hospital with a cast, and was referred to a hand therapist, Linda Ford. Mrs. Ortega was with Beatriz during this whole time. Mrs. Ortega alleges that she could not sleep the night before the operation.

After the surgery, Beatriz underwent a series of successful physical therapies, leaving her finger, by her account, "normal." Beatriz suffers no discomfort when using her hand for daily activities. Beatriz's treating physician assesses she has a 3% partial impairment of her right dominant upper extremity and a 2% impairment of her whole

person. Beatriz is the only Plaintiff alleging a physical injury in this case. According to her own deposition, she is able to physically participate in all activities in which she wants to participate, and her life is now back to "normal." Beatriz never saw a psychiatrist nor a psychologist regarding her alleged emotional damages.

The medical expenses related to the surgery amounted to $4,927.07, some of which were covered by Triple S. Plaintiffs' own treating physician stated in his report that Beatriz's prognosis is guarded in view that her condition may get worse with the growth of her hands, because her finger deformity may get worse. He also stated that she may require additional reconstructive surgery to improve her deformity and the range of motion of the affected finger joint. She may also have a greater possibility of the development of degenerative joint disease at the affected finger joint. Nonetheless, Plaintiffs have stated that they do not foresee opting for any more surgical procedures. Furthermore, there are no readily calculable future medical expenses that can be reasonably expected to arise from the injury to Beatriz's finger.

Sergio Blanco is Beatriz's father. He is divorced from Mrs. Ortega, but alleges to have an excellent relationship with his daughter. He sees her once or twice a week, and on every weekend since the divorce. He was informed of the injury by phone the same day it happened. Mr. Blanco, as well as Mrs. Ortega and Patricia Blanco, Beatriz's older sister, all claim emotional damages for the pain and suffering inflicted upon them due to Beatriz's injury. However, Mrs. Ortega never sought counseling as a result of her alleged emotional suffering, and did not lose any income as a result of Beatriz's injury. Sergio Blanco's sole claim for damages arises from alleged emotional damages. However, he has never seen a doctor regarding his alleged emotional suffering. The same is true of Beatriz's older sister Patricia.

In their Amended Complaint, Plaintiffs allege damages in the following amounts: Beatriz Blanco—not less than $500,000 for physical damages and not less than $400,000 for emotional damages; Maria del Rosario Ortega—medical expenses of $4,927.07, estimated future medical expenses of $25,000, and mental anguish of $250,000; Sergio Blanco—emotional damages estimated at $175,000; and Patricia Blanco—emotional damages estimated at $150,000. However, Defendants argue that the above-described set of facts does not support a claim, for any of the Plaintiffs, which would meet the jurisdictional amount of $75,000.00.

Applicable Law and Analysis

District Courts have jurisdiction in diversity cases when the amount in controversy exceeds $75,000.00 28 U.S.C. § 1332(a). When evaluating whether this jurisdictional amount is met, the Court may not aggregate several plaintiffs' claims. *Rompe v. Yablon*, 277 F. Supp. 662 (S.D.N.Y. 1967). For a claim to survive, it must allege the $75,000.00 minimum by itself.

It is well-settled law that, unless challenged, plaintiffs good faith allegations of damages will control the determination of the amount in controversy. *See, e.g., Department of Recreation and Sports of Puerto Rico v. World Boxing Association*, 942 F.2d 84, 88 (1st Cir. 1991) *citing Gibbs v. Buck*, 307 U.S. 66, 72 (1939). However, once the defendant challenges the amount of damages alleged in the complaint, then the burden shifts to the plaintiffs to establish facts indicating that, to a legal certainty, the claims involve more than the jurisdictional minimum. *Id.* at 88; *St. Paul Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288-89 (1938); *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936); *Spielman v. Genzyme Corp.*, 251 F.3d 1, 5 (1st Cir. 2001); Wright, Miller & Cooper; Federal Practice and Procedure: Jurisdiction 3d § 3702. A case "can only be dismissed . . . for a failure to [satisfy the jurisdictional amount-in-controversy require-

ment] when it appears to a legal certainty that . . . the claim is really for less than the jurisdictional amount." *Serrano v. Nicholson Nursery, Inc.*, 844 F. Supp. 73, 75 (D.P.R. 1994) (*citing St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938)). As such, the party seeking jurisdiction has the burden of demonstrating that it is not a legal certainty that the claim involves less than the jurisdictional amount. *Dep't. of Recreation v. World Boxing Ass'n.*, 942 F.2d 84, 88 (1st Cir. 1991). The party can satisfy this burden by furnishing affidavits or amended pleadings. *Id.*

As the First Circuit has held, the proof offered by the plaintiffs must persuade the Court that someone familiar with the applicable law could objectively find the claim worth more than the jurisdictional minimum, otherwise dismissal must follow. *Jimenez Puig v. Avis Rent-a-Car Sys.*, 574 F.2d 37, 40 (1st Cir. 1978). Once diversity jurisdiction is challenged, the party invoking the court's jurisdiction has the burden of proving facts that support the allegation of jurisdiction by a preponderance of the evidence. *Bank One, Texas, N.A. v. Montle*, 964 F.2d 48, 50 (1st Cir). And lastly, courts must "rigorously enforce the jurisdictional limits that Congress chooses to set in diversity cases." *Coventry Sewage Assoc. v. Dworkin Realty Co.*, 71 F.3d 1, 3 (1st Cir. 1995).

In this case, Defendant argues that none of the four Plaintiffs can establish that it is not a legal certainty that their claims fall below the jurisdictionally required amount of $75,000. Since this is a diversity action, Puerto Rico law will govern the amount of damages recoverable by the Plaintiffs. *See Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938); *see also Gasperini v. Ctr. for Humanities, Inc.*, 518 U.S. 415 (1996). Accordingly, Plaintiffs carry the burden of establishing that, to a legal certainty, Puerto Rico law will support recovery of more than $75,000 for their individual claims. Plaintiffs, however, argue that damage awards in Federal Court may not be limited by state court decisions.

While this might be true, it is also the case that similar Commonwealth court decisions are instructive as to the amount of damages that are appropriate in this case, even though they might not be controlling. As stated by Plaintiffs, "in diversity jurisdiction actions a federal court must look at state law to determine the nature and extent of the rights to be enforced." Accordingly, let us take a look at some Puerto Rico Supreme Court cases which are somewhat comparable to the case at bar.

In *Muñoz v. New York & Porto Rico Steamship Co.*, 72 D.P.R. 582, 72 P.R.R. 543 (1951), the Puerto Rico Supreme Court upheld an award of $4,000 to a plaintiff who suffered a three and a half inch long gash on her hand that resulted in the permanent impairment of the action of her thumb. This award would be equivalent to an award of $27,661.54 in 2002 dollars,[1] which falls quite short of the jurisdictional amount. Furthermore, the injury sustained by the plaintiff in *Muñoz* was considerably larger than the one in the case at bar, and was considerably more serious, since it affected the plaintiffs thumb and not her pinky.[2]

In *Ruiz Márquez v. Municipio de Toa Alta*, RE-85-332 (1985), the plaintiff was awarded $3,000, and her parents were awarded $400 each, for several fractured fingers. These awards are equivalent to $5,013.01 and $668.40 in

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[1] All the adjustments made to the awards due to inflation were calculated using the CPI Inflation Calculator at http://data.bls.gov/cgi-bin/cpicalc.pl. The CPI inflation calculator uses the average Consumer Price Index for a given calendar year. This data represents changes in prices of all goods and services purchased for consumption by urban households. This index value has been calculated every year since 1913. For the current year, the latest monthly index value is used.

[2] As Defendant points out, the importance of the thumb, when compared to the other fingers, is underlined by the fact that the presence of an opposable thumb is one of the distinguishing characteristics that separates primates from other mammalian life forms.

2002 dollars, respectively. As a result of her injuries, the plaintiff was no longer able to play basketball or guitar. Plaintiffs expert assessed her incapacity at 1% of her left hand. In the present case, the Plaintiffs' physician assessed Beatriz's incapacity at 3% of her upper left extremity. Therefore, even assuming that Beatriz's injury was three times greater than the one in *Ruiz Márquez* (which the Court doubts, given Beatriz's deposition testimony), the damages would still only be compensable at just over $15,000.00. Likewise, Beatriz's parents' injuries would be compensable, according the Puerto Rico Supreme Court, at around $2,000.00. Again, this would fall way short of the jurisdictional amount.

Another case which is comparable to the one at bar is *Lugo Irizarry, v. Clínica Perea*, RE-84-436 (1985). In that case, the plaintiff lost three fingers as a result of medical malpractice. As a result of the poor surgical and post-operative care, the plaintiff developed a condition in her left forearm and hand that led to the amputation of three of her fingers. The plaintiffs physicians assessed her disability as 33% of her entire person, as opposed to the 2% overall disability assessment in the case at bar. As a result of the amputations, the Plaintiff in *Lugo Irizarry* was no longer able to work at her job as a machine operator in a clothing factory. Nevertheless, even with such severe injuries, the Puerto Rico Supreme Court awarded amounts that would fail to satisfy the jurisdictional minimum. The Puerto Rico Supreme Court awarded the primary plaintiff the equivalent of $58,490.00 in 2002 dollars for physical damages and mental anguish. Likewise, the Court awarded the plaintiffs daughter the equivalent of $6,684.01 in 2002 dollars for mental anguish. Even in this case, where the injury was grossly more severe than the one in the case at bar, the jurisdictional amount was not met.

Plaintiff, however, cites several Puerto Rico Supreme Court cases which she claims substantiate her position. However, the Court believes that all these cases can be

distinguished from the case at bar. In fact, the first case cited by Plaintiffs is very important for the issue of emotional damages, but actually works in Defendant's favor. In *Hernández v. Fournier*, 80 D.P.R. 93, 80 P.R.R. 94 (1957), the Puerto Rico Supreme Court held that family members have a right to recover for emotional damages (mental and moral damages) in a wrongful death action. In order to recover mental and moral damages, however, a family member, with no physical injuries of his or her own, must first prove the reality of the mental and moral damages suffered. As the Court explained in *Ramos Rivera v. E.L.A.*, 90 P.R.R. 806, 809 (1964), moral damages shall be compensated only if "it is shown how those damages affected the health, welfare, and happiness of the injured . . . ." Furthermore, "[i]n order to prevent an endless number of persons from bringing an action as a result of a single tortious act which causes the death of another person, the court need merely demand that each plaintiff fully justified the reality of the damages which he claims. **Thus, as to the moral damages, it is essential to prove deep moral suffering and anguish, and a passing affliction will not give rise to an action.**" *Id.* at 103-104 (emphasis added). The Supreme Court has consistently held that in this jurisdiction moral damages, sufferings, and anguishes can be compensated only if plaintiffs show that their emotional condition **has been affected substantially**. *Duchesne Landrón v. Ruiz Arroyo*, 102 D.P.R. 699, 702 (1974); *Lameiro v. Dávila*, 103 D.P.R. 834, 842 (1978). Therefore a court should dismiss claims for damages that do not rise to the level of deep moral suffering and anguish which substantially affected the plaintiff's emotional conditions, even in cases of wrongful death. It is highly questionable whether Plaintiffs Maria del Rosario Ortega, Sergio Blanco, and Patricia Blanco Ortega, none of whom suffered any physical injuries in this case, have established "deep moral suffering" at all. But let us take a look at the other cases which Plaintiffs cite in support of their position.

In *Concepción Guzmán v. Autoridad de Fuentes Fluviales*, 92 D.P.R. 488, 92 P.R.R. 473 (1965), the plaintiff suffered mental anguish damages, without any physical injuries, as a result of an electrical wire explosion near his house. However, unlike Plaintiffs in the case at bar, the plaintiff in *Concepción Guzmán* was treated by at least two psychiatrists for the mental and emotional afflictions he suffered as a result of the electrical wire explosion. He had symptomatic manifestations of his mental pain and suffering that are in stark contrast to the lack of such symptomatology in this case. The plaintiff in *Concepción Guzmán* suffered, *inter alia*, paralysis of the left side of his body, nausea, palpitations, dizziness, torticollis, headaches, intermittent shakes, insomnia, nightmares, irritability, incontinence, and even impotence. Furthermore, some of these symptoms persisted for months. Plaintiffs in this case have alleged no similar symptoms arising from their alleged mental suffering, and have proffered no psychiatric testimony as to the damages they have suffered.

Plaintiffs also cite *Moa v. Commonwealth of Puerto Rico*, 100 P.R.R. 572 (1972). In that case the Puerto Rico Supreme Court was confronted with a claim for moral damages made by the parents of a high school student who had his index finger partially amputated as the result of an accident in school. Although *Moa* is quite similar to the case at bar since both involved an injury to a child's finger, it must be noted that the injury in *Moa* was greater, since the plaintiff in that case had his index finger partially amputated. Furthermore, the plaintiffs injury in *Moa* is distinguishable in that he harbored on-going feelings of self-consciousness about his amputated finger and his injury prevented him from participating in activities he earlier enjoyed, such as dancing. In this case, however, Beatriz has testified that she feels no lasting ill effects, that the injury has not limited her enjoyment of activities she enjoyed prior to the injury, and that she has not been made fun of by other children and has not been subject to embarrassment or humiliation.

Nevertheless, even the plaintiff in *Moa* would not have satisfied the $75,000 jurisdictional amount. The Court awarded the primary plaintiff the equivalent of $43,014.35 in 2002 dollars. On the other hand, the child's father was awarded for his pain and suffering only the equivalent of $12,904.31 in 2002 dollars. Since the injury in the case before us is even smaller than the one in *Moa*, we could not expect the other three Plaintiffs to reach the jurisdictional amount, either.

Ramos Acosta v. Caparra Dairy, 116 D.P.R. 60, 116 T.P.R. 78 (1985) involved claims for moral damages, brought by the family members of the deceased in a wrongful death action. In this case, the Court approved the following damage award payments: $50,000 to the father, $34,171.04 to the mother, $10,000 to the brother and $5,000 to the sister. These are roughly equivalent, in 2002 dollars, to $83,550.20, $57,090.99, $16,710.04, and $8,355.02, respectively. Under *Ramos Acosta*, then, only the father's claim would have met the jurisdictional minimum. But it is important to bear in mind that the father's claims arose from a wrongful death action and were still only barely over $75,000.00. Of course, we cannot reasonably imagine that the pain and suffering of losing a child is anywhere near the suffering sustained by Plaintiffs in this case due to Beatriz's injury of her pinky finger.

Lastly, Plaintiffs cite to *Infante v. Leith*, 85 P.R.R. 24 (1962). That case arose out of a dispute involving three dogs. Two larger dogs attacked the plaintiff's dog. In that occasion the Court awarded the plaintiffs a total of $1,500.00 ($8930.46 in 2002 dollars) for both nuisance and emotional damages. Even though we understand that it is far worse to suffer the trauma of having your child injured, than watching your dog being attacked, the damages awarded in *Infante* fall so far short of the jurisdictional limit that we fail to see how this case could possibly help Plaintiffs' cause.

Plaintiffs have also made reference to several federal court decisions which they understand favor their position. Once again, the Court believes that all these cases can be distinguished from the case at bar. Plaintiff first cites *Duchesne v. American Airlines Inc.*, 758 F.2d 27 (1st Cir. 1985). However, this case is inapplicable since the Court in that occasion made an analysis under the previous $10,000.00 jurisdictional minimum. Plaintiff in that case barely made it to the $10,000.00, but would not have been even close to fulfilling the current $75,000.00 requirement.

Plaintiff then cites a series of cases in which damages were awarded for pain and suffering in excess of the $75,000.00 limit. In all of these cases, however, the plaintiffs brought evidence of their emotional or neurological conditions, either as testimony of their treating psychiatrists or psychologists, or as expert reports on their ongoing mental or neurological suffering. *See Mejía Quirós v. Maxxam Property Corp.*, 108 F.3d 425 (1st Cir. 1997) (medical testimony about **continuing** headaches, mild depression, low self-esteem and post-traumatic stress); *Grajales Romero v. American Airlines, Inc.*, 194 F.3d 288 (1st Cir. 1999) (medical evidence of **continuing** neck pains, headaches, **loss of memory**, post-concussion syndrome, cervical sprain, **chronic** back pain and **loss of cognitive functions**); *Smith v. Kmart Corp.*, 177 F.3d 19 (1st Cir. 1999) (plaintiff **diagnosed** with post-traumatic stress disorder, chronic major depression difficulty sleeping mood changes and impairment of her social and occupational relationships **which required psychiatric treatment for three to five years**); *Havinga v. Crowley Towing and Transportation Co.*, 24 F.3d 1480 (1st Cir. 1994) (**expert testimony** to the effect that plaintiffs all suffered from acute post-traumatic stress disorder); *Heddinger v. Ashford Memorial Community Hospital*, 734 F.2d 81 (1st Cir. 1984) (plaintiff whose pinky finger had been amputated and who had suffered a loss of the use of her ring finger missed a significant period of work and underwent **extensive psychiatric counseling**); *LaForest v.*

Autoridad de Fuentes Fluviales, 536 F.2d 443 (1st Cir. 1976) (plaintiffs "substantially affected" by victim's **wrongful death**); *Correa v. Hospital San Francisco*, 69 F.3d 1184 (1st Cir. 1995) (plaintiffs' **expert psychiatrist** testified they suffered depression due to their **mother's death**). All of these cases can be distinguished from the case before us since the plaintiffs 1) suffered continuing neurological problems, and/or ?) presented evidence from medical experts proving their emotional disorders which resulted from the injuries. In the case at bar, none of the Plaintiffs claim to have suffered any such ongoing neurological problems, and they all failed to present any kind of medical evidence as to their emotional conditions. In fact, Plaintiffs admitted in their depositions that they did not require any type of psychiatric or psychological treatment or help.

On the other hand, Defendant cites several federal cases which the Court finds are much more comparable to the case at bar. This Court was confronted with a similar scenario in *Tirado Toro v. Builder's Square, Inc.*, 986 F. Supp. 714 (D.P.R. 1997). In that case, this Court held that an accident resulting in fourteen (14) stitches to a plaintiffs head did not support a damage award in excess of $75,000. Although the Plaintiff in *Tirado Toro* alleged damages in excess of $80,000, the Court dismissed the claim after finding that no one who was familiar with the applicable law could objectively view the claim as being worth the jurisdictional minimum. *Id.*, at 716. In finding that the case did not meet the jurisdictional amount, the Court relied heavily on the fact that there was no proof of permanent injury, obviously other than the scar, and that there was no evidence that further medical treatment would be necessary. *Id.* The Court finally stressed that there was no record of continued medical treatment for the **emotional injury suffered**, either. *Id.* In the case at bar, the plaintiffs have failed to provide proof of any medical treatment for their emotional conditions.

This Court also dismissed the complaint in *Serrano v. Nicholson Nursery, Inc.*, 844 F. Supp. 73 (D.P.R. 1994) for

failure to fulfill the jurisdictional amount requirement. The Court based its holding on the fact that there was no evidence or allegations regarding any "consultations with any medical personnel for purposes of diagnosis or treatment as a result of the suffering." *Id.* at 76. The same was true in *De Jesús v. Eastern Air Lines, Inc.*, 708 F. Supp. 470 (D.P.R. 1989), where the plaintiffs failed to bring any evidence that they had "consulted any medical personnel for purposes of diagnosis or treatment as a result of the emotional upset suffered." *Id.* at 472. Accordingly, the Court in *De Jesús* concluded that the plaintiffs had "failed to show that their emotional condition ha[d] been affected substantially." *Id.* at 473. Plaintiffs in the case before us have similarly failed to bring any evidence to prove that their emotional suffering was chronic, ongoing, or more severe than the temporary shock of having to deal with a loved one's cut on a finger.

Finally, in another comparable case *Bewley v. Sims*, 438 F. Supp. 708 (D. Md. 1977), Plaintiff claimed damages in excess of the jurisdictional minimum resulting from a fight at a Super Bowl party. Although Plaintiff suffered a broken nose and two black eyes, the Court dismissed the case for failure to establish the jurisdictional minimum, noting that the injuries would not be permanent. *See also Turner v. Wilson Line of Massachusetts*, 242 F.2d 414, 418-19 (1st Cir. 1957) (jurisdictional amount not met by a claim for compensation for seven to eight hours of headache, weakness, dizziness, nausea and vomiting). Having all these precedents in mind, let us take one last close look at the allegations and injuries suffered by each one of the individual Plaintiffs.

Beatriz Blanco Ortega

Beatriz is the only Plaintiff alleging physical injuries in this case. Beatriz's injury is a cut on her right, little pinky finger. Her injury did not initially require stitches to control the bleeding, but rather a butterfly suture. As a result of the injury, Beatriz had a relatively minor surgery to repair a

tendon in her finger, which was performed on an outpatient basis. Beatriz did suffer some nausea and vomiting during the day of the surgery, as a result of the anesthesia used, however, no such symptoms persisted after that. According to Plaintiffs' own medical report, she suffers no discomfort when using her hand for common activities, even though she has a 3% partial permanent impairment of her right dominant upper extremity and a 2% impairment of her whole person. According to her own deposition, none of Beatriz's activities have been permanently limited because of the injury. Although the Complaint alleges that Beatriz is no longer able to play volleyball, she stated in her deposition that she is able to play basketball and participates fully in her school's gym class. In fact, her deposition shows that she no longer plays volleyball because she chooses not to do so. Furthermore, she stated that her finger now feels "normal." Beatriz participated in successful physical therapy of the finger and now agrees that her life is "back to normal."

Beatriz suffers from no significant permanent injury, other than a scar on the interior portion of her finger and a slight reduction in the range of motion of her little finger, which her treating physician concluded gave her a 3% incapacity of her right arm, or a 2% incapacity of her whole person. According to that same physician, the "grip strength" on her right hand (on which the injury occurred) is greater than the "grip strength" on her uninjured left hand. By her account, her finger is "normal," her life has returned to "normal," and none of her life activities have been permanently affected. Furthermore, aside from the physician's vague and general statement to the effect that Beatriz might require further surgery in the future, Plaintiff has presented no evidence that any such future damage may in fact occur with any certainty. Such an award of future damages would, therefore, be completely conjectural and uncertain, especially considering that Plaintiffs have averred that Beatriz does not wish to opt for such further surgery.

Therefore, Plaintiff has only established that she could be compensated for the 3% incapacity mentioned above. Having considered all the above cited cases we find that it is a legal certainty that such an injury would not be compensated in any amount close to or larger than the jurisdictional minimum. In fact, the ever-popular compendium of damage awards under Puerto Rico tort law, Antonio J. Amadeo Murga, *El Valor de los Daños en la Responsabilidad Civil*, Tomo II, at 745 and 748, provides several examples of awards, from Commonwealth and federal courts, based on the total (100%) incapacity of a person's arm. The average award is equivalent to about $88,768.00 in 2002 dollars. *Id.* Based on this, Beatriz's 3% incapacity of her arm should be compensated at an average of $2,663.04 (3% of $88,768.00). In addition, Amadeo Murga provides two tables of emotional damage awards as a result of trauma to the hands or fingers. *Id.* at 780 and 791. The average award for such a trauma is equivalent to around $34,252.60. We should be aware that this average does not take into account the severity of the injury, and that, in all likelihood, Beatriz's particular injury would be compensated with an amount in the smaller side of this bell curve. This is especially true given the fact that, as discussed above, Beatriz has failed to provide any evidence of any psychological injury. But, even if we were to take these averages and add them together (the incapacity and the emotional trauma compensation averages), they would only amount to $36,915.64, which is less than half the jurisdictional minimum. As such, it is a legal certainty that Beatriz's claim does not involve more than the jurisdictional amount and must, therefore, be dismissed.

Maria del Rosario Ortega

Maria del Rosario Ortega is Beatriz's mother. She claims damages in three categories: (1) incurred medical expenses totaling $4,927.07; (2) estimated future medical expenses of $25,000; and (3) mental anguish and suffering in the amount of $250,000. With respect to the incurred medical expenses, Defendant correctly points out that some of these costs were

covered by Plaintiff's medical insurance plan with Triple S. Defendant also correctly states that the application of the Collateral Source doctrine under Puerto Rico law is done on a case-by-case basis. *Nieves Cruz v. Universidad de Puerto Rico*, res. el 31 de abril de 2000, 2000 TSPR 78. However, even assuming that the collateral source doctrine were to be applied in this case, Plaintiff's incurred medical expenses fall very short of the jurisdictional amount. In terms of future medical expenses, as discussed above, both the treating physician's report and the Plaintiffs' depositions show that any such future medical expenses are entirely speculative, and any future surgery will be entirely elective. Furthermore, in said depositions Plaintiffs stated that no further surgery was going to be pursued.

Finally, in terms of emotional damages, we should remember that Puerto Rico law supports a claim for emotional damages, only in cases where the plaintiff's emotional condition is "substantially affected." The courts have developed a number of factors to help in the determination of whether or not a plaintiff has been "substantially affected." As discussed above, the courts inquire as to whether a plaintiff has undergone a hospitalization; lost income; consulted a doctor regarding the alleged emotional suffering; or missed work as a result of the alleged suffering. In this case, the record shows that none of the Plaintiffs has sought any such psychiatric treatment, sustained any such loss of income or wages, or been "substantially affected" by the cut to Beatriz's little finger. None of the Plaintiffs was hospitalized or received any psychological treatment at all. And even if we were to assume that the pain and trauma suffered by Plaintiffs was enough to state a cause of action for emotional damages under Puerto Rico Supreme Court precedent, we must conclude, based on the case law discussed above, that the amount of damages would be far less than the $75,000.00 jurisdictional minimum. But let us say, for the sake of argument that Mrs. Ortega could theoretically be awarded as much as Beatriz, who was the

person actually injured, due to her emotional distress, then, based on Amadeo Murga's figures as discussed above, Mrs. Ortega would only be entitled to less than $40,000.00 for the emotional damages arising from her daughter's trauma to the hand or fingers. Accordingly, Mrs. Ortega's incurred medical expenses ($5,000.00) are not nearly enough, even with such an award of emotional damages (which we do not find would be reasonable anyway), to reach the jurisdictional minimum. As such, her claim must also be dismissed.

Sergio Blanco

Sergio Blanco is Beatriz's father. Mr. Blanco is divorced from Beatriz's mother. Beatriz lives with her mother. Mr. Blanco alleges $175,000 in emotional damages. Again, Mr. Blanco has never been hospitalized as a result of his daughter's injury. Like Mrs. Ortega, Mr. Blanco has never consulted anyone about his alleged emotional suffering. Although Mr. Blanco did miss some work because of the injury, the work was limited to less than half of a day. And although Mr. Blanco missed approximately half a day of work, he suffered no loss of income. Mr. Blanco's relationship with his daughter is not close in terms of time spent together. She does not usually spend nights at his house. Even though they both live in the San Juan metropolitan area, he does not pick her up from school. He did not take her to any of her doctor or therapy appointments for her injured finger. He did not go to see his daughter's volleyball games. And when he learned of his daughter's injury, he did not leave work to meet her at the hospital. In fact, when asked if Beatriz's injury has "substantially affected" him, Mr. Blanco replied that it is "[n]ot like I'm going to die, but I don't like it a bit." However, such a temporary discomfort resulting from the unfortunate injury of a loved one is not the type of deep moral suffering and anguish that will give rise to an action for emotional damages under Puerto Rico law. In any case, as discussed above with respect to Mrs. Ortega, any compensation for

such an injury would not come anywhere near the jurisdictional amount. As such, Mr. Blanco's claim must also be dismissed.

Patricia Blanco Ortega

Patricia Blanco Ortega is Beatriz's older sister. Patricia was a college student at the time of the injury to Beatriz and was not in Puerto Rico. Patricia claims emotional damages in the sum of $150,000. Like her Co-plaintiff family members, Patricia was never hospitalized as a result of her alleged emotional suffering. Nor did she ever consult anyone regarding her alleged emotional injuries. She did not miss any school as a result of the injury to he sister's little finger, and was in no other way "substantially affected" by the injury. As such, everything discussed above with respect to Mrs. Ortega and Mr. Blanco is equally applicable to Patricia's claim. Therefore, her claim must also be dismissed.

Conclusion

Although this Court is sensitive to Plaintiffs' real and heart-felt suffering due to the unfortunate incident in which Beatriz cut her finger, it cannot renounce its identity as a court of limited jurisdiction. This Court takes very seriously the emotional distress that people suffer as a result of the pain their loved ones might endure, however, it also takes very seriously its responsibility to preserve its legitimacy by respecting the limits of its jurisdiction. The Court cannot engage in a therapeutic jurisprudence which compromises its duty to protect the legitimacy of the federal courts. Plaintiffs, despair not, the Commonwealth courts await! As such, and for all the reasons discussed above, Defendant's motion for summary judgment is **GRANTED**, and this case will be **DISMISSED WITHOUT PREJUDICE**.

SO ORDERED.

In San Juan, Puerto Rico, this 18th day of July, 2002.

s/S.E. Casellas
SALVADOR E. CASELLAS
United States District Judge

FILED: Oct. 25, 2002

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MARIA DEL ROSARIO
ORTEGA, et al.
Plaintiffs

Civil No. 00-1475(SEC)

v.

STAR-KIST CARIBE, INC., et al.
Defendants

ORDER

MOTION	RULING
Docket #70 **Motion for Reconsideration**	**DENIED.** The Court does not find any new arguments or evidence in Plaintiffs' motion which would make us re-consider our previous decision. As Defendants point out in their opposition, the Court did not make any factual determinations in its Opinion, but rather reached a conclusion of law to the effect that it lacked subject matter jurisdiction over this case. We will let our prior ruling stand.
Docket #71 **Supplement to Motion for Reconsideration**	**DENIED.** *See* Ruling on Motion for Reconsideration above.

Date: October 24, 2002

s/S.E. Casellas
SALVADOR E. CASELLAS
United States District Judge

RELEVANT STATUTORY PROVISIONS

TITLE 28. JUDICIARY AND JUDICIAL PROCEDURES

PART IV - JURISDICTION AND VENUE

CHAPTER 85—DISTRICT COURTS, JURISDICTION

28 U.S.C. § 1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between -

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

For the purposes of this section, section 1335, and section 1441, an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $75,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this section and section 1441 of this title -

(1) a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insurer has been incorporated and of the State where it has its principal place of business; and

(2) the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent, and the legal representative of an infant or incompetent shall be deemed to be a citizen only of the same State as the infant or incompetent.

(d) The word "States", as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

FEDERAL RULE OF CIVIL PROCEDURE

Rule 20. Permissive Joinder of Parties

(a) Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons (and any vessel, cargo or other property subject to admiralty process in rem) may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) Separate Trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.

(3)

No. 04-79

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IN THE

Supreme Court of the United States

MARIA DEL ROSARIO ORTEGA, ET AL.,

Petitioners,

v.

STAR-KIST FOODS, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

MEMORANDUM IN OPPOSITION

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PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The parties to the proceeding are Petitioners Maria Del Rosario Ortega, Sergio Blanco, and Patrizia Blanco-Ortega (plaintiffs in the courts below) and Respondent Star-Kist Foods, Inc. (defendant in the courts below). Plaintiff Beatriz Blanco-Ortega is not a petitioner before this Court. *See* Pet. 4 n.2.

At the time the district court action was initiated, Star-Kist Foods, Inc. was a wholly-owned subsidiary of the H.J. Heinz Company. During the course of the litigation, Star-Kist Foods, Inc. became a division of Del Monte Corporation, d/b/a Del Monte Foods, which in turn is a wholly-owned subsidiary of Del Monte Foods Company.

The facts of this case are "not normally the stuff of lawsuits in federal court." Pet. App. 1a. Beatriz Blanco-Ortega "cut her pinky finger while opening a can of Star-Kist tuna." *Id.* at 5a. The cut was "about a quarter of an inch deep, and about three-quarters of an inch long." *Id.* at 47a. A surgeon "successfully repaired" the damage. *Id.* at 5a. Today the finger "bears a small scar and is slightly bent." *Id.*

Beatriz, her parents, and her sister filed suit in federal court, asserting diversity jurisdiction under 28 U.S.C. § 1332. The district court dismissed the complaint for failure to satisfy the $75,000 amount-in-controversy requirement. *See* Pet. App. 3a. The court of appeals agreed as to Beatriz's parents and sister but was not convinced to a "legal certainty" that Beatriz will recover less than $75,000. Pet. App. 5a. The court of appeals held that the district court lacked jurisdiction to decide the claims of the other family members. Because Beatriz was allowed to proceed with her claims in federal court, she is not a petitioner before this Court. *See* Pet. 4 n.2.

REASONS WHY THE PETITION SHOULD BE DENIED

1. Both the court of appeals and Petitioners recognize that application of the supplemental jurisdiction statute, 28 U.S.C. § 1367, to parties who cannot satisfy the $75,000 amount-in-controversy requirement of 28 U.S.C. § 1332 arises in two different contexts: "ordinary joinder of additional plaintiffs under Fed. R. Civ. P. 20" and joinder of "absent class members in diversity-only class actions." Pet. App. 11a; *see also* Pet. 10 ("issue has arisen in two contexts"). Moreover, both the court of appeals and Petitioners recognize that the issue may not be resolved the same way in both contexts. *See* Pet. App. 32a n.19 (stating that "[t]he application of § 1367 to diversity-only class actions is a different problem for several reasons," and expressing "no view" on that issue); Pet. 9 ("the Court

might reach different conclusions applicable to the Rule 20 and class-action contexts"); *id.* at 17 n.13 ("courts have differed" as to whether result must be the same in both contexts).

Petitioners assert (Pet. 15) that there are "compelling reasons" to consider the "ordinary joinder" issue before considering the class action issue. In fact, there are strong reasons for doing exactly the opposite.

First, the circuit split on the "ordinary joinder" issue is not nearly as well-developed as the split over class actions. Only three circuits are involved in the "ordinary joinder" split, and only one agrees with Petitioners. *See Stromberg Metal Works, Inc. v. Press Mech., Inc.*, 77 F.3d 928 (7th Cir. 1996). Two circuits – the First in this case and the Third in *Meritcare, Inc. v. St. Paul Mercury Ins. Co.*, 166 F.3d 214 (3d Cir. 1999) – have gone the other way. Thus, contrary to Petitioners' assertion (Pet. 13) that the issue has been "fully joined and ventilated," 10 of 13 courts of appeals have not yet decided it. In contrast, the circuit split on the "class action" issue now involves nine circuits, with multiple circuits on each side. *See* Pet. App. 11a-12a; Pet. 11; *Olden v. Lafarge Corp.*, 2004 WL 1960157 (6th Cir. Sept. 7, 2004) (deciding class-action issue).

The "ordinary joinder" circuit split is not well-developed in other ways. *Stromberg*, the lone court of appeals decision supporting Petitioners, is eight years old, and in those years has not attracted support from any other court of appeals. Moreover, the Seventh Circuit expressly indicated that one reason for its decision in *Stromberg* was its "reluctan[ce] to create a conflict" with circuit cases deciding the class-action issue. *Stromberg*, 77 F.3d at 930. Depending upon how this Court decides the class action issue, the Seventh Circuit might well revisit the ordinary joinder issue. At a minimum, it would be appropriate to allow the numerous courts of

appeals that have not yet decided the issue an opportunity to consider the First Circuit's lengthy and thoughtful opinion in this case.

Second, this Court has previously granted review to consider the class action issue in *Free v. Abbott Labs.*, 529 U.S. 333 (2000). The Court is therefore familiar with the class action issue, and has no need to grant review in a case presenting a related but distinct issue as preparation for deciding an issue that has already been fully briefed and argued to the Court and vetted by nine courts of appeals.

Third, as Petitioners acknowledge (Pet. 15), the class action issue has received considerably more judicial attention than the ordinary joinder issue. Because the class action issue arises more frequently and involves more litigants, it is of greater practical importance and has a greater claim on the attention of this Court. The ordinary joinder issue, in contrast, has been decided by only three courts of appeals in 14 years.

Fourth, the ordinary joinder issue is not simple but "very difficult," Pet. App. 1a, as shown by Petitioners' own attempts to summarize their arguments. *See, e.g.*, Pet. 21-23 n.15 (attempting, in an extraordinarily long footnote, to discuss the removal statute, 28 U.S.C. § 1441). At one point, Petitioners assert that "no one has ever argued – nor could they"– that the presence of plaintiffs that fail to meet the amount-in-controversy requirement provides a basis for dismissing the entire action. Pet. 19-20. Petitioners contend that this is so because "courts routinely dismiss the claims only of the affected plaintiffs." Pet. 20 n.14. A few pages earlier, however, Petitioners state that "the addition of non-diverse plaintiffs . . . *does* leave the Court without jurisdiction," but this does *not* "foreclose a court from proceeding with the case by dismissing the non-diverse parties." Pet. 16 n.12 (citation omitted; emphasis added).

Indeed, the court of appeals concluded that "if § 1367 permits the permissive joinder of plaintiffs who cannot meet the amount-in-controversy requirement, then it also permits the joinder of non-diverse plaintiffs," thus "overturn[ing] nearly 200 years of case law interpreting § 1332 and authoriz[ing] a potentially huge expansion of the federal docket." Pet. App. 27a.

There is no reason for this Court to defer resolution of the class action issue on which it has previously granted certiorari in order to first resolve the less-developed and distinct ordinary joinder issue. If the Court were to grant review in *Allapattah Services, Inc. v. Exxon Corp.*, No. 04-70 (pet. for cert. filed July 14, 2004), or another case presenting the class action issue, it should follow its usual practice by allowing the lower courts to consider, in light of the Court's decision in one case, the proper disposition of related issues raised in other cases, particularly where the only court of appeals on one side of the split has indicated that it might go the other way depending on how the class-action issue is resolved. As the court of appeals noted, "this is an area where courts are wise to tread carefully." Pet. App. 12a.

3. Even if the Court wished to review the ordinary joinder issue, this case is not a good vehicle for deciding that question. *First*, the financial stakes are quite small. Both courts below concluded that it is a legal certainty that petitioners cannot recover $75,000 for their claims, and Respondent believes the actual value of the claims is much less. Because the value of Petitioners' claims is low, the parties lack an adequate financial incentive to litigate a preliminary jurisdictional issue in this Court.

Second, this case is atypical in that the plaintiffs are seeking to litigate personal injury claims in federal court, while the defendant seeks to litigate those claims in a court of Puerto Rico. More often, the plaintiff seeks to litigate in state court, while the defendant prefers a

federal forum. This reversal (which is probably explained by the fact that Puerto Rico does not provide a right to a jury trial in cases of this kind) could affect the parties' arguments before this Court, particularly in a case with low financial stakes.

Third, the court of appeals' holding that one of the plaintiffs meets the $75,000 amount-in-controversy requirement is questionable. The court of appeals held that it was "error" to consider multiple cases decided by the Puerto Rico Supreme Court holding, on similar facts, that plaintiffs are entitled to less than $75,000 in damages, primarily "because Puerto Rico does not have jury trials in civil cases." Pet. App. 4a. But if a jury were to award an amount of damages that the highest court of Puerto Rico would regard as excessive, a federal court sitting in diversity would be required to reduce the award. *See Gasperini v. Center for Humanities, Inc.* 518 U.S. 415 (1996).

* * *

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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(2)

Supreme Court, U.S.
FILED
SEP 21 2004
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No. 04-79

IN THE

Supreme Court of the United States

MARIA DEL ROSARIO ORTEGA, SERGIO BLANCO, by themselves and representing minors BEATRIZ BLANCO-ORTEGA AND PATRIZIA BLANCO-ORTEGA,

Petitioners,

v.

STAR-KIST FOODS, INC.,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit

REPLY BRIEF OF PETITIONERS

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September 21, 2004

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REPLY BRIEF OF PETITIONERS

As the Petition for Certiorari shows, the federal circuits are deeply divided over the effect of 28 U.S.C. § 1367 upon the amount-in-controversy requirement in multi-plaintiff cases,[1] Pet. 10-13, and this issue is important and recurring, and calls for a uniform resolution by this Court, Pet. 13-15. The Petition further demonstrates that the application of § 1367 in the non-class context is in many respects identical to its application in the class context, but that the non-class analysis is logically antecedent to the class analysis, which requires consideration of several additional, complicating issues. Pet. 15-19. Petitioners also showed that the decision below is incorrect. Pet. 19-24.

Respondent does not dispute the certworthiness of the question whether § 1367 authorizes the district courts to exercise supplemental jurisdiction over related claims of additional plaintiffs who do not satisfy the amount-in-controversy requirement, as it arises in the class action context. Indeed, Respondent affirmatively concedes that "the circuit split on the 'class action' issue now involves nine circuits, with multiple circuits on each side," and that there is a three-circuit split in the non-class context. Opp. 2.

Nor does Respondent dispute that the class and non-class cases present this precise issue in different contexts, and that the non-class version of the issue logically comes first (and is less complex than the issue as it arises in the class context). Respondent admits that the issue, in the class context, "has already been fully briefed and argued to th[is] Court and vetted by nine courts of appeals," Opp. 3, and does not deny that it warrants resolution by this Court. And it offers no

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[1] In addition to the cases discussed in the Petition (at 11), see *Olden v. LaFarge Corp.*, No. 02-1148, 2004 WL 1960157 (6th Cir. Sept. 7, 2004) (holding that § 1367 abrogates *Zahn v. International Paper Co.*, 414 U.S. 291 (1973)).

substantive response to Petitioners' showing that the First Circuit construed the statute incorrectly on the merits.

Unable to dispute the central facts showing that review by this Court is necessary, Respondent makes several peripheral and unpersuasive arguments against granting the Petition.

1. Respondent's primary argument is that the circuit split on the non-class version of the issue is less well-developed than in the class context. Opp. 2-3. Respondent asserts that, "[a]t a minimum, it would be appropriate to allow the numerous courts of appeals that have not yet decided the issue an opportunity to consider the First Circuit's lengthy and thoughtful opinion in this case." *Id.*

But this suggestion ignores the fact that the two splits are part and parcel of a single interpretive question regarding the effect of the supplemental jurisdiction statute on the amount-in-controversy requirement in multi-plaintiff cases. *See* Pet. App. 35a-36a. While it is conceivable that the issue might be resolved differently in the two factual contexts, it is certain that the Court's reasoning in one context will greatly influence, if not determine, the outcome in the other. And the logical relationship of the two analyses — with the non-class case for supplemental jurisdiction being more straightforward than in the class context — strongly suggests that the non-class issue should be resolved before determining the more difficult, class-action version of the issue.

In particular, analysis of the issue in the non-class context is less complex for several reasons. An essential predicate for the exercise of supplemental jurisdiction is that the supplemental claims arise from "the same case or controversy" as those properly in court under 28 U.S.C. § 1332. 28 U.S.C. § 1367(a). While Rule 20 joinder itself has this same case or controversy requirement as an essential prerequisite, it is less obvious whether (and when)

claims of multiple plaintiffs brought together by way of Rule 23 should be regarded as "part of the same case or controversy," thus satisfying an essential predicate of § 1367(a). Pet. 16.

In addition, whereas § 1367(b) deals expressly with the instance of Rule 20 joinder and, on its face, provides for supplemental jurisdiction in cases like this one, that section makes no reference at all to Rule 23. Pet. 17. And the legislative history, to the extent it may be relevant, provides expressly that § 1367 is not intended to affect the jurisdictional requirements of § 1332 in diversity-only class actions. Pet. 17. It contains no similar statement about Rule 20 joinder. Finally, there is the fact, as noted by Judge Easterbrook, that the expansion of federal court jurisdiction effected by finding supplemental jurisdiction in the non-class context is far more modest than if it is found in the class-action context. It is, thus, "easy to imagine [Congress] wanting to overturn *Clark* but not *Zahn*; it is much harder to imagine wanting to overturn *Zahn* but not *Clark*." *Stromberg Metal Works, Inc. v. Press Mech., Inc.*, 77 F.3d 928, 931 (7th Cir. 1996).

2. Respondent also argues that certiorari should be denied because the merits of "the ordinary joinder issue is not simple but very difficult." Opp. 3 (internal quotation marks omitted). Of course, Petitioner has not argued that the issue is simple — few issues that have so deeply divided the federal courts could properly be characterized as "simple." The point is that the merits analysis in the case of joinder is both integrally related to and demonstrably *less* complex than in the case of class actions, for the reasons noted above and described more fully in the Petition.

3. Respondent also argues that this case is a poor vehicle for resolving the split. Respondent does not dispute that the issue was raised and squarely resolved below in lengthy and

very thoughtful majority and dissenting opinions. The arguments Respondent does make are meritless.

First, Respondent's argument about the size of the "financial stakes" (Opp. 4) is one which would ensure that this issue is never addressed by this Court. Obviously, a question about the existence of supplemental federal court jurisdiction over claims smaller than $75,000 can only arise in cases where the "financial stakes" for the claims at issue are relatively small. *See St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288-89 (1938) (holding that amount-in-controversy requirement is not independently satisfied if it appears to a legal certainty that the claim is for less than the jurisdictional amount). Respondent offers no authority for the proposition that recurring and disputed jurisdictional issues should be ignored by this Court simply because they inherently arise only in cases where modest financial stakes are in issue.

Second, Respondent's argument that the Court should deny certiorari due to the allegedly unusual alignment of the parties in this case is unpersuasive on several grounds. The suggestion that usually "the plaintiff seeks to litigate in state court, while the defendant prefers a federal forum," Opp. 4-5, is a gross overgeneralization. A primary reason for original diversity jurisdiction is that plaintiffs may often prefer a federal forum over a state tribunal that could be partial to the defendant. *See, e.g., Pease v. Peck*, 59 U.S. (18 How.) 595, 599 (1855). Obviously, as in this case from Puerto Rico — where the plaintiffs elected to file in federal court — parties select or prefer various fora in different cases for different reasons.

Lurking in these arguments about the amount at stake and the alleged misalignment of parties is at least a hint that the Petition should be denied because, under the circumstances, Respondent cannot be counted upon to vigorously litigate the

issue in this Court.[2] Respondent suggests that the parties' interests in other cases "could affect the parties' arguments before this Court." Opp. 5. Yet Respondent vigorously and successfully litigated the same issues in the court of appeals, presumably without pulling punches out of concern for precedential consequences.

The suggestion that a major American corporation should be immune from defending an otherwise certworthy appellate-court decision in this Court because it has mixed feelings about the legal basis of its victory should be rejected out of hand. Coming from such a party, this rope-a-dope strategy of feigned reluctance to participate vigorously in litigation before this Court is hardly credible. Even if it were otherwise, it is not an argument to which this Court could give credence without undermining the integrity of federal-court litigation at all levels.

These suggestions also do a discredit to the professionalism and integrity of the members of the Supreme Court bar who would litigate this case if the Petition were granted. There is no reason to suppose that the lawyers who have been retained by the parties would do anything less than brief and argue the case vigorously.[3]

Finally, Respondent suggests (Opp. at 5) that the First Circuit's holding "that one of the plaintiffs meets the

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[2]A similar suggestion (addressed to the motivations of both sides) was made more bluntly by the respondents in *Exxon Corp. v. Allapattah Services, Inc.*, No. 04-70 (U.S. Pet. for Cert. filed July 14, 2004), Br. in Opp. at 21-22.

[3]Notwithstanding that Scott T. Rickman, Associate General Counsel of Del Monte Foods, appears as counsel of record on Respondent's Memorandum in Opposition, all of Petitioners' dealings with counsel for Respondent have been with Robert Long of Covington & Burling, whose office filed a motion for an extension of time in this Court and issued the proof of service on Respondent's Memorandum in Opposition.

$75,000 amount-in-controversy requirement" is "questionable." That is not a ground for denying certiorari, as that factual issue was fully resolved below against Respondent, and Respondent has not cross-petitioned for certiorari on that issue (which would have been necessary for review of that holding because the acceptance of Respondent's argument by this Court would expand the relief that Respondent obtained from the Court of Appeals). *See Northwest Airlines, Inc. v. County of Kent*, 510 U.S. 355, 364 (1994). In any event, Respondent's suggestion (Opp. at 5) that an award to Beatriz exceeding $75,000 would be excessive under the peculiarities of Puerto Rico remittitur law, applicable here under *Gasperini v. Center for Humanities, Inc.*, 518 U.S. 415 (1996), is simply wrong: the law of Puerto Rico imposes no such "'substantive cap . . . on damages.'" *Grajales-Romero v. Am. Airlines, Inc.*, 194 F.3d 288, 300 (1st Cir. 1999) (quoting *Mejias-Quiros v. Maxxam Property Corp.*, 108 F.3d 425, 427 n.1 (1st Cir. 1997) (alteration in *Grajales-Romero*)).

CONCLUSION

The petition for a writ of certiorari should be granted.

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(1)

No. 04-79

IN THE

Supreme Court of the United States

MARIA DEL ROSARIO ORTEGA, SERGIO BLANCO, by themselves and representing minors BEATRIZ BLANCO-ORTEGA AND PATRIZIA BLANCO-ORTEGA,

Petitioners,

v.

STAR-KIST FOODS, INC.,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the First Circuit

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RELEVANT DOCKET ENTRIES

I. BEFORE THE UNITED STATES DISTRICT COURT DISTRICT OF PUERTO RICO (SAN JUAN), CASE NO. 3:00-cv-01475-SEC

1	04/18/2000	COMPLAINT
	04/18/2000	SUMMONS issued for Star Kist Caribe Inc, Star Kist Foods, Inc, A-Z, Ins. Co.
2	07/10/2000	MOTION by Star Kist Foods, Inc to Dismiss, w/unsworn statements and exhs attached. Response due 7/24/00.
17	12/06/2000	PARTIAL RESPONSE by Maria del-Rosario Ortega, Sergio Blanco, Blanco-Ortega, Patrizia Blanco-Ortega in opposition to motion to Dismiss by Star Kist Foods, Inc
20	12/07/2000	MOTION by Maria del-Rosario Ortega, Sergio Blanco, Blanco-Ortega, Patrizia Blanco-Ortega to Compel dfts to adequately ans plfs' diversity discovery w/attachs.
22	12/19/2000	ORDER informative motion Noted. denying motion to Compel dfts to adequately ans plfs' diversity discovery (signed by Judge Salvador E. Casellas)
23	12/19/2000	RESPONSE by Star Kist Caribe Inc, Star Kist Foods, Inc in opposition to motion to Compel dfts to adequately ans plfs' diversity discovery by Patrizia Blanco-Ortega, Blanco-Ortega, Sergio Blanco, Maria del-Rosario Ortega

24	12/19/2000	REPLY by Star Kist Foods, Inc to response to motion to Dismiss by Star Kist Foods, Inc, w/attachs.
25	02/02/2001	OPINION AND ORDER granting in part, denying in part motion to Dismiss. Jgmt shall be entered dismissing the complaint against Star Kist Caribe in accordance w/the terms of this O&O. (signed by Judge Salvador E. Casellas)
26	02/02/2001	PARTIAL JUDGMENT dismissing the complaint against Star Kist Caribe, Inc. as per O&O of even date. (signed by Judge Salvador E. Casellas)
31	02/26/2001	ANSWER to Complaint by Star Kist Foods, Inc
32	02/28/2001	MOTION by Maria del-Rosario Ortega, Sergio Blanco, Blanco-Ortega, Patrizia Blanco-Ortega to Amend complaint w/ tendered doc attached.
35	03/23/2001	ORDER granting motion to Amend complaint. Dft shall file a resp w/in 20 days of this order, Answer deadline to 4/16/01 for Star Kist Foods, Inc (signed by Judge Salvador E. Casellas)
36	03/23/2001	AMENDED COMPLAINT by Maria del-Rosario Ortega, Sergio Blanco, Blanco-Ortega, Patrizia Blanco-Ortega (Answer due 4/2/01 for Star Kist Foods, Inc) amending complaint

39	04/10/2001	ANSWER by Star Kist Foods, Inc to amended complaint.
44	05/21/2001	MOTION by Star Kist Foods, Inc to Dismiss, w/attachs. Response due 6/4/01. Modified on 05/24/2001
47	06/05/2001	RESPONSE by Maria del-Rosario Ortega, Sergio Blanco, Blanco-Ortega, Patrizia Blanco-Ortega in opposition to motion to Dismiss by Star Kist Foods, Inc
49	06/18/2001	RESPONSE by Maria del-Rosario Ortega, Sergio Blanco, Blanco-Ortega, Patrizia Blanco-Ortega in opposition to motion to Dismiss by Star Kist Foods, Inc
53	07/19/2001	REPLY by Star Kist Foods, Inc to response to motion to Dismiss by Star Kist Foods, Inc
56	10/24/2001	MOTION by Star Kist Foods, Inc for Summary Judgment, w/attachs. Response due 11/6/01.
76	10/30/2001	NOTICE OF APPEAL order, judgment order, opinion order by Maria del-Rosario Ortega, Sergio Blanco, Blanco-Ortega, Patrizia Blanco-Ortega. Transcript Order Form furnished to appellant
64	01/03/2002	RESPONSE by Maria del-Rosario Ortega, Sergio Blanco, Blanco-Ortega, Patrizia Blanco-Ortega in opposition to motion for Summary Judgment by Star Kist Foods, Inc, w/ attachs.

66	02/05/2002	REPLY by Star Kist Foods, Inc to response to motion for Summary Judgment by Star Kist Foods, Inc, w/supplement attached. Modified on 02/07/2002
67	07/26/2002	ORDER mooting motion to Dismiss (signed by Judge Salvador E. Casellas)
68	07/26/2002	OPINION AND ORDER granting w/o prej. motion for Summary Judgment (signed by Judge Salvador E. Casellas)
69	07/26/2002	JUDGMENT dismissing this case w/o prej. (signed by Judge Salvador E. Casellas)
	07/28/2002	Case closed
70	08/07/2002	MOTION by Maria del-Rosario Ortega, Sergio Blanco, Blanco-Ortega, Patrizia Blanco-Ortega for Reconsideration of judgment order Response due 8/20/02.
71	08/21/2002	SUPPLEMENTAL MOTION by Maria del-Rosario Ortega, Sergio Blanco, Blanco-Ortega, Patrizia Blanco-Ortega for Reconsideration of motion for Reconsideration of judgment order by Patrizia Blanco-Ortega, Blanco-Ortega, Sergio Blanco, Maria del- Rosario Ortega referring to: motion for Reconsideration of judgment order by Patrizia Blanco-Ortega, Blanco-Ortega, Sergio Blanco, Maria del-Rosario Ortega. Response due 9/3/02.

72	08/23/2002	RESPONSE by Star Kist Foods, Inc in opposition to motion for Reconsideration of judgment order by Patrizia Blanco-Ortega, Blanco-Ortega, Sergio Blanco, Maria del-Rosario Ortega, supplemental motion for Reconsideration of motion for Reconsideration of judgment order by Patrizia Blanco-Ortega, Blanco-Ortega, Sergio Blanco, Maria del-Rosario Ortega by Patrizia Blanco-Ortega, Blanco-Ortega, Sergio Blanco, Maria del-Rosario Ortega, w/attachs. Modified on 08/26/2002
73	08/28/2002	REPLY by plfs to response to motion for Reconsideration of judgment order by plfs, supplemental motion for Reconsideration of motion for Reconsideration of judgment order by plfs by plfs, w/attachs. Modified on 08/29/2002
74	09/12/2002	RESPONSE by Star Kist Foods, Inc in opposition to motion for Reconsideration of judgment order by Patrizia Blanco-Ortega, Blanco-Ortega, Sergio Blanco, Maria del-Rosario Ortega, supplemental motion for Reconsideration of motion for Reconsideration of judgment order by Patrizia Blanco-Ortega, Blanco-Ortega, Sergio Blanco, Maria del-Rosario Ortega by Patrizia Blanco-Ortega, Blanco-

		Ortega, Sergio Blanco, Maria del-Rosario Ortega
75	10/25/2002	ORDER denying motion for Reconsideration of judgment order denying supplemental motion for Reconsideration of motion for Reconsideration of judgment order by Patrizia Blanco-Ortega, Blanco-Ortega, Sergio Blanco, Maria del-Rosario Ortega (signed by Judge Salvador E. Casellas)
76	10/30/2002	NOTICE OF APPEAL order, judgment order, opinion order by Maria del-Rosario Ortega, Sergio Blanco, Blanco-Ortega, Patrizia Blanco-Ortega. Transcript Order Form furnished to appellant Appeal record due on 11/12/02
	11/22/2002	Certified and transmitted Record on Appeal to U.S. Court of Appeals: appeal by Patrizia Blanco-Ortega, Blanco-Ortega, Sergio Blanco, Maria del-Rosario Ortega, appeal by Patrizia Blanco-Ortega, Blanco-Ortega Sergio Blanco, Maria del-Rosario Ortega (dkts #1-76)
	02/27/2003	USCA Case Number Re: appeal by Patrizia Blanco-Ortega, Blanco-Ortega, Sergio Blanco, Maria del-Rosario Ortega, appeal by Patrizia Blanco-Ortega, Blanco-Ortega, Sergio Blanco, Maria del-Rosario Ortega USCA NUMBER: 02-2530 Modified on 03/17/2003

78	06/09/2004	Printed Opinion of USCA dated June 2, 2004 as to 76 Notice of Appeal, filed by Sergio Blanco, Maria del-Rosario Ortega, Blanco-Ortega, Patrizia Blanco-Ortega, 76 Notice of Appeal, filed by Sergio Blanco, Maria del-Rosario Ortega, Blanco-Ortega, Patrizia Blanco-Ortega. The judgment of the district court is AFFIRMED as to Beatriz's family members. As to Beatriz, the judgment is VACATED and the case is REMANDED.
	07/01/2004	Appeal Record Returned: Notice of Appeal
82	07/27/2004	First MOTION to Continue *Pre-Trial Conference; Informing Filing of Certiorari Before Supreme Court; and To Convert Conference* filed by Freddie Perez-Gonzalez on behalf of all plaintiffs (Perez-Gonzalez, Freddie)
85	09/02/2004	ORDER setting aside Order setting pretrial and settlement conference pending resolution of Plaintiffs' petition for certiorari. Signed by Judge Salvador E Casellas on 9/2/2004.

II. BEFORE THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT, CASE NO. 02-2530

1.	12/13/02	CIVIL CASE docketed. Opening forms sent. Notice filed by Appellants Maria del Rosario Ortega and Sergio Blanco. Appearance form due 12/27/02. Docketing Statement due 12/27/02. Transcript Report/ Order due 12/27/02.
2.	12/13/02	RECORD filed: 3 vol(s). Volume I: 1-24; Volume II: 25-60; Volume III: 61-76.
3.	4/4/03	BRIEF filed by Appellants Maria del Rosario Ortega and Sergio Blanco. Length: 3/31/03, Copies: 10, delivered by Mail. Certificate of service date 3/31/03. Appellee brief due 5/5/03. Reply brief due 5/19/03.
4.	4/4/03	APPENDIX filed by Appellants Maria del Rosario Ortega and Sergio Blanco. Copies: 5. Volumes: 1. Delivered by Mail, filed. Certificate of service date 3/31/03.
5.	5/13/03	BRIEF filed by Appellee Star Kist Foods, Inc. Length: 61, Copies: 9, delivered by Mail. Certificate of service date 5/12/03. Reply brief due 5/27/03.
6.	5/13/03	DISCLOSURE STATEMENT on behalf of Appellee Star Kist Foods, Inc filed.
7.	7/1/03	REPLY BRIEF filed by Appellants Maria del Rosario Ortega and Sergio Blanco. Length: 18 pages, Copies: 9, delivered by Mail. Certificate of service date 7/1/03.
8.	9/24/03	Assigned for the month of November, (11/5/03).

9.	11/5/03	CASE ARGUED 11/05/03. Boudin, Ch. J., Torruella, Lynch, JJ.
10.	11/10/03	SUPPLEMENTAL AUTHORITY pursuant to FRAP 28j filed by Appellants Maria del Rosario Ortega and Sergio Blanco. Certificate of Service not included.
11.	6/2/04	OPINION filed. Chief Judge Michael Boudin, Judge Juan R. Torruella, Judge Sandra L. Lynch. Signed Judge Sandra L. Lynch, Authoring Judge PUBLISHED.
12.	6/2/04	JUDGMENT entered by Chief Judge Michael Boudin, Judge Juan R. Torruella, Judge Sandra L. Lynch.
13.	6/24/04	MANDATE ISSUED.
14.	6/25/04	RECORD consisting of three volume of original proceedings: vol. 1 contains docket entries 1-24, vol. 2 contains docket entries 25-60, vol. 3 contains docket entries 61-76 returned to originating court.
15.	7/19/04	U.S. SUPREME COURT NOTICE filed regarding petition for writ of certiorari which was filed in the Supreme Court on 7/16/04. Supreme Court case number: 04-79.
16.	10/25/04	U.S. SUPREME COURT ORDER granting petition for writ of certiorari filed in the Supreme Court on 04-79. The case is consolidated with No. 04-70 and a total of 90 minutes is allotted for oral argument.

[Dated April 14, 2000]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MARIA DEL ROSARIO ORTEGA and SERGIO BLANCO, by themselves and representing minors BEATRIZ BLANCO ORTEGA and PATRIZIA BLANCO ORTEGA Plaintiffs vs. STAR-KIST CARIBE, INC.; STAR-KIST FOODS, INC.; and INSURANCE COMPANIES XYZ Defendants	CIVIL NO.:_____ CIVIL ACTION **PLAINTIFFS DEMAND TRIAL BY JURY**

COMPLAINT

TO THE HONORABLE COURT:

Plaintiffs, through their undersigned attorneys, for their cause of action respectfully allege as follows:

I

Jurisdiction and Venue

1. This is a tort action based on products liability due to the negligence of the defendants who market and sell in Puerto Rico lunch kits which contain a pull-top easy-open can of tuna that when opened have a sharp edge lid which is dangerous to people, specially children, and have no warning to this respect.

2. On April 21, 1999, one of the before mentioned lids injured Beatriz Blanco Ortega's right-hand little finger when she opened one of the mentioned cans of tuna.

3. Plaintiffs are all citizens of Puerto Rico.

4. Defendants are all citizens and residents of a state other than Puerto Rico.

5. The matter in controversy exceeds $75,000 exclusive of interests and costs.

6. The can of tuna was sold in Puerto Rico.

7. The cause of action arose in Puerto Rico and the witnesses are in Puerto Rico.

8. Based on the before stated, jurisdiction of this court lies in diversity of citizenship, pursuant to 28 U.S.C. Sec. 1332(a) and venue lies in this district.

II
The Parties

9. Star-Kist Caribe, Inc. is a foreign corporation organized under the laws of Delaware and authorized to do business in Puerto Rico.

10. Defendant Star-Kist Foods, Inc. is a corporation, organized under the laws of a state other than Puerto Rico, with principal offices in Newport, Kentucky, dedicated to the manufacture, distribution, and sale of processed tuna.

11. The aforementioned corporations will be referred to as "Starkist".

12. Codefendants XYZ Insurance Companies are the fictitious names of the insurance companies, which had issued and maintained in full force and effect an insurance policy on behalf of Starkist under whose terms and conditions they are jointly and severally liable with its insured for the facts and damages herein, and assumes the citizenship of their insured. Once the identities of said insurance companies are known, the plaintiffs will request

leave to amend the complaint to incorporate their correct names.

13. Plaintiff Maria del Rosario Ortega (Mrs. Rosario) is a resident of Puerto Rico and is the divorced mother and legal guardian with custody over her minor daughter, Beatriz Blanco Ortega and Patrizia Blanco Ortega.

14. Plaintiff Sergio Blanco (Mr. Blanco) is a resident of Puerto Rico and is the divorced father and legal guardian of Beatriz Blanco Ortega.

15. Plaintiff, Beatriz Blanco Ortega ("Beatriz") is ten (10) years old, a resident of Puerto Rico, and the youngest daughter Mrs. Ortega and Mr. Blanco.

16. Plaintiff Patrizia Blanco Ortega is a minor and the oldest sister of Beatriz Blanco Ortega; she is a citizen of Puerto Rico.

III
The Facts

17. Starkist is engaged in interstate commerce as a manufacturer and retailer of cans of tuna that are sold to the public or consumers through various wholesalers and retailers.

18. For various years, Starkist has been doing business and selling canned tuna in different forms and methods in Puerto Rico, either by itself or through various wholesalers, retailers or distributors.

19. On or about April 21, 1999, while Beatriz was at her school lunch break, she opened a can of tuna in a Starkist Charlie's Tuna Salad Lunch Kit ("the lunch kit") which is manufactured and placed in the market for sale and/or distribution by defendants.

20. Mrs. Ortega had selected and placed the lunch kit in her daughter's lunch box because, among other reasons, the lunch kit was represented by its manufacturer to be of good taste, enjoyable, and easy to prepare, which made it ideal for children to bring to school for lunch brakes.

21. Beatriz opened the lunch kit's can of tuna following the instructions of the package, and while doing so she slit her right-hand little finger with the sharp edge of the lid of the can.

22. Beatriz's injury was of such nature that she had to be taken by her mother to the Emergency Room of the Ashford Presbiterian Hospital in San Juan, Puerto Rico, where she was referred to a hand's specialist.

23. The hand's specialist determined that Beatriz finger's flexor tendon and digital nerve needed to be repaired and recommended surgery.

24. Because there were no operating rooms available, Beatriz had to wait for surgery until April 22, 1999.

25. After surgery Beatriz suffered difficulties as a result of the anesthesia.

26. Thereafter Beatriz had to remain with a cast on her right arm that had a string sown to her finger nail in order to protect the tendon and keep the finger bent which gave her a weird appearance.

27. In order to recover the movement lost in her right-hand little finger Beatriz had to receive physical therapy which caused her pain and anguish.

28. However, as of this date, Beatriz's finger has not fully recovered and is still bent which makes her hand to look awkward and strange.

IV
The Negligence and Direct Cause

29. The proximate and direct cause of Beatriz's injures is defendant Starkist's negligence in manufacturing and marketing for public consumption a product that is unsafe to the consumer, particularly children.

30. Starkist also omitted a notice of precaution to be taken by children or for parents to be given to children, when

opening a can that is unreasonably dangerous to a child, or to parents as consumers.

31. When Beatriz opened the can of tuna she was unaware of any danger to which she would be exposed as a result thereof.

32. All of the above caused injuries and damages to the plaintiffs.

33. The dangerous situation created by the defendants to which Beatriz was exposed was not known by her who at the time was nine years old.

34. Beatriz's parents relied on the safety of the product manufactured and/or marketed by the defendants.

35. The defendants were negligent in breaching their duty to place in the open market a product that is fit for public consumption, particularly children.

36. The breach of defendants' duty was the direct cause of the injuries and damages sustained by the plaintiffs.

V
The Damages

37. Beatriz is a ten (10) year-old child who lives with her mother, has a good relationship with her father, attends school every day, and used to practice volleyball.

38. Due to defendant's negligence, Beatriz suffered a painful cut in her right-hand little finger and went through the horrifying experience of watching herself bleed profusely with no control over it.

39. This experience traumatized and caused her great emotional pain and suffering to the extent that she does not eat tuna fish anymore.

40. After surgery Beatriz had to suffer the discomfort and effect of general anesthesia; then for a prolonged period of time she underwent painful therapy.

41. Because of defendant's negligence, Beatriz's finger is bent, her hand appearance is awkward, and she has problems when writing.

42. To prevent her finger from bending, Beatriz needs to use a cast which she rejects and has developed antipathy to.

43. Due to defendant's negligence, Beatriz' parents and sister went through the anguishing experience of watching their younger daughter and sister being injured, nervous and in extreme pain, which has traumatized and caused them great emotional pain and suffering.

44. Both, Mrs. Ortega and Mr. Blanco have incurred in the following medical expenses:

45. Plaintiffs' damages are estimated in the following amounts:

A. Beatriz

(1) Physical damages, not less than $500,000

(2) Emotional damages, not less than $400,000

B. Mrs. Ortega

(1) Incurred medical expenses as of the date of this complaint $4,927.07

(2) Estimated future medical expenses $25,000

(3) Mental anguish and suffering $250,000

C. Mr. Sergio Blanco's emotional damages are estimated in the sum of $175,000

D. Patrizia Blanco Ortega emotional damages estimated in the sum of $150,000

WHEREFORE, plaintiffs pray for a judgment in their favor and against defendants, ordering payment of the amounts above mentioned, together with interests thereon from the date of filing the present complaint, plus costs, and reasonable attorney's fees.

PLAINTIFFS DEMAND TRIAL BY JURY.

In San Juan, Puerto Rico, this 14th day of April, 2000.

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UDSC-PR 119005

[Dated Jan. 31, 2001]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MARIA DEL ROSARIO-ORTEGA, et. al.	*	
Plaintiffs	*	
	*	
v.	*	**Civil No.**
	*	**00-1475(SEC)**
STAR-KIST CARIBE, INC., et. al.	*	
Defendants	*	

****

OPINION AND ORDER

Pending before the Court is Defendants' motion to dismiss for lack of subject matter jurisdiction. **(Docket # 2)**.[1] For the reasons stated below, Star-Kist's motion to dismiss is **GRANTED IN PART AND DENIED IN PART.** Judgment shall be entered accordingly.

I. Background

Plaintiffs' complaint, filed on April 7, 2000, pleads a cause of action in tort against Star-Kist Caribe, Inc. ("Star-Kist Caribe") and Star-Kist Foods, Inc. ("Star-Kist Foods"), for an injury suffered by minor-plaintiff Beatriz Blanco-Ortega, ten years old, who slit her right hand little finger while opening a can of tuna contained in a lunch kit manufactured and distributed by the Defendants. The Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1332(a) alleging diversity of citizenship between the Defendants and the Plaintiffs. (Docket # 1 ¶¶ 1-8). Plaintiffs allege that while they are citizens of Puerto Rico, the defendant corporations

[1] Also considered in this opinion are Plaintiff's "Partial Opposition" to Star-Kist's motion. (Docket # 17) and Defendants' reply to Plaintiff's Opposition. (Docket # 24).

are "organized under the laws of a state other than Puerto Rico, with principal offices in Newport, Kentucky." (*Id.* at ¶ 9).

However, on July 10, 2000 the Defendants filed a motion to dismiss alleging that Star-Kist Caribe is a wholly-owned subsidiary of Star-Kist, and that it is a *bona-fide,* separate and distinct corporate entity engaged in the packing and distribution of tuna products in Puerto Rico. In addition, the defendants assert that Star-Kist Caribe is fully capitalized and that it maintains corporate formalities, including board meetings and corporate books. Also, Star-Kist Caribe's board of directors has different members from Star-Kist's. Therefore, they allege that for diversity purposes, Star-Kist Caribe's citizenship must be considered separately and distinctly from Star-Kist's. (Docket #2 at 4).

On that issue, Star-Kist Caribe produced an unsworn statement under penalty of perjury signed by Janet Rich, Star-Kist's Corporate Secretary, who attests that Star-Kist Caribe is incorporated in the State of Delaware with an alleged principal place of business in Puerto Rico. (Docket #2, Attach. 1 ¶ 3). She also attests to the fact that Star-Kist Caribe is fully capitalized and holds board meetings and maintains corporate books. (*Id.* ¶¶ 4-5). In addition, she stated that "some of the members of the board of Star-Kist Caribe, Inc. are different than [sic] the members of the board of Star-Kist Foods, Inc." (*Id.* at ¶ 6). Also, that "the managerial offices of Star-Kist Caribe, Inc. are located in Puerto Rico." (*Id.* at ¶ 7). The office of the General Manager of Star-Kist Caribe is also located in Puerto Rico. (*Id.* at ¶ 8). Star-Kist Caribe owns and operates a tuna canning/ packaging center only in Puerto Rico. (*Id.* at ¶ 9). That tuna canning/packaging plant is managed by personnel in Puerto Rico. (*Id.* at ¶10). Finally, Star-Kist Caribe does not own or operate facilities outside of Puerto Rico. (*Id.* at ¶11).

Defendants' second exhibit is an unsworn declaration under penalty of perjury by Alfredo Archilla, Star-Kist

Caribe's Vice-President and General Manager, who attests to the same facts asserted by Ms. Janet Rich. (Docket # 2, Attach. 2). Based on these unsworn declarations, the Defendants argue that this case must be dismissed because of lack of complete diversity.

On August 21, 2000, Plaintiffs requested an extension of time to conduct limited discovery on the issue of Defendants' citizenship. (Docket # 6). Said motion was granted by the Court on August 28, 2000. (Docket # 8). On December 6, 2000—after several extensions of time related to discovery—the Plaintiffs filed a "Partial Opposition." (Docket # 17). Plaintiffs' opposition first alleges that Star-Kist Caribe's principal place of business, using the "control nerve center" test, is either Pittsburgh, Pennsylvania, or New Port, Kentucky. For that purpose, Plaintiffs produced evidence that establishes the following on their behalf: (1) that Star-Kist Caribe is incorporated in Delaware, (2) that its principal office is located at 900 Market Street in Wilmington, DE, although it is authorized to do business anywhere in the world; (3) that Star-Kist Caribe does not keep its business records in Puerto Rico. Its corporate books, accounting records, and other business records are kept under the custody of Mrs. Kimberly Kirkpatrick, Star-Kist Caribe's Secretary, whose offices are in Pittsburgh, PA. (Docket #17, App. G - Annex 3C); (4) Star-Kist Caribe's internal accountant and comptroller is Mr. Steve Rayburn, whose office is located in Pittsburgh, PA. (Docket # 17, App. G - Answer 1, and App. I, Resp. 3g); (5) the latest annual reports for Star-Kist Caribe could not be obtained neither from the Commonwealth Department of State, nor from the Defendants themselves through discovery, (Docket # 17, App. J); (6) that out of nine (9) officers and directors for whom Star-Kist Caribe produced addresses, only one (1) has an office in Puerto Rico (Mr. Alfredo Archilla, formerly Director, Vice-President, and since the year 2000, President of Star-Kist Caribe). All the other officers or directors have offices in Pennsylvania, Kentucky or California (Docket #

27, App. G); (6) no address was provided where the board of directors meetings take place; (7) there is some evidence adduced by the Plaintiffs which supports the inference that the H.J. Heinz Company ("Heinz"), Star-Kist and Star-Kist Caribe have common officers and directors and that they conduct their business outside of Puerto Rico. For example, Plaintiff presented evidence that Star-Kist Caribe's board members tender their resignation to the H.J. Heinz Company and that Star-Kist directors are the ones who approve and ratify the Star-Kist Caribe's appointees for directorships. (Docket # 27, App. G).

In the alternative, Plaintiffs' counsel argues that even if the Court finds that Star-Kist Caribe's principal place of business is Puerto Rico, the complaint should be maintained against Star-Kist. For that purpose, Plaintiffs argue that Star-Kist Caribe is not an indispensable party. (*Id.* at 2).

The Defendants replied that Star-Kist Caribe is an indispensable party because it has a substantial interest in the outcome of this litigation. For example, "more than likely, Star-Kist Caribe packed the can of tuna which is at the heart of this dispute." (Docket #24 at 12). Moreover, the Defendants cite caselaw indicating that "where the subsidiary is the primary participant in a dispute involving both the parent and the subsidiary, the subsidiary is an indispensable party." (*Id.*) (quoting *E&E Investment, Inc. v. Simmons, Co.*, 169 F.R.D. 467, 470 (D.P.R. 1996).

II. Analysis of Applicable Law

A. Jurisdiction

This court has original jurisdiction over civil actions between citizens of different states in which the amount in controversy exceeds $75,000. 28 U.S.C. § 1332(a). For that purpose, "[d]iversity must be complete: the citizenship of each plaintiff must be shown to be diverse from that of each defendant." *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 373-74, 98 S.Ct. 2396, 2402-03, 57 L.Ed.2d 274 (1978). Where corporations are concerned, they are

considered citizens of both the State of incorporation and the State where they maintain their principal place of business. 28 U.S.C. § 1332(c)(1); *Toste Farm Corp. v. Hadbury, Inc.*, 70 F.3d 640, 642 (1st Cir. 1995).

In this particular case, it is undisputed that co-defendant Star-Kist Caribe is incorporated in the State of Delaware. At issue is whether its principal place of business is Puerto Rico. That determination shall be made considering the facts as they existed at the commencement of the case. *Toste Farm Corp.*, 70 F.3d at 642. On that issue, plaintiff bears the burden of proof. *Alicea-Rivera v. Sindicato de Aseguradores*, 12 F.Supp.2d 243, 245 (D.P.R. 1998), citing *Thomson v. Gaskill*, 315 U.S. 442, 446 (1942) and *Hawes v. Club Ecuestre El Comandante*, 598 F.2d 702 (1st Cir. 1979) ("Since statutes conferring diversity jurisdiction must be strictly construed, where a plaintiff's claim of diversity is challenged, the plaintiff has the burden of proof."). Moreover, plaintiff cannot rely on unsubstantiated allegations to satisfy this burden. *Media Duplication Serv., Ltd. v. HDG Software, Inc.*, 928 F.2d 1228, 1235 (1st Cir. 1991) ("Once jurisdictional allegations are challenged, the party asserting diversity has the burden of establishing those allegations with competent proof. No presumption of truthfulness attaches to the allegations.").

When the principal place of business of a corporation is involved, the First Circuit has established that any of three tests may be used to determine its location. *See Walker v. Pueblo Int'l, Inc.*, 569 F.2d 1169, 1171 (1st Cir. 1978). These three tests are "distinct, but not necessarily inconsistent." *Id.* The first, the "nerve center test" establishes that a corporation's principal place of business is "the center from which a multifaceted corporation's officers direct, control and coordinate all activities without regard to locale, in the furtherance of the corporate objective." *Id.* at 1172 (internal quotations and parenthesis omitted). The second, "the center of corporate activity test" looks to the place where the corporation's day-to-day management is

carried out. *Id.* A third test focuses on "the locus of the operations of the corporation," *Id.*, that is, "where the bulk of the corporation's actual physical operations are located." *Topp v. CompAir Inc.*, 814 F.2d 830, 834 (1st Cir. 1987) (citing *Inland Rubber Corp. v. Triple A Tire Service, Inc.*, 220 F.Supp. 490 (S.D.N.Y. 1963)).

Applying these tests, the First Circuit has held that a corporation has its principal place of business in that State where it operates independently from its parent company, where it keeps all of its corporate records, ledgers and accounts, and where it is "directed and controlled by [its] officers." *Rodriguez v. SK & F Co.*, 833 F.2d 8, 9 (1st Cir. 1987). Moreover, in the parent-subsidiary context, the First Circuit has stated that there are "two unremarkable propositions: (1) that in determining a corporation's principal place of business, a district court's inquiry must focus solely on the business activities of the corporation whose principal place of business is at issue; and (2) that an exception to this general rule applies where there is evidence that the separate corporate identities of a parent and subsidiary have been ignored." *Taber Partners, I v. Merit Builders, Inc.*, 987 F.2d 57, 62-3 (1st Cir. 1993). If the corporate veil between parent and subsidiary is observed,[2] the fact that the parent corporation "[i]s ultimately the sole beneficiary and director of the subsidiary's corporate activities" is of no consequence for diversity purposes. *Id.* at 62. (quoting *Walker v. Pueblo Int'l*, 569 F.2d at 1171).

In *Taber*, the First Circuit concluded that a partnership whose "sole corporate 'activities' consist of holding or administering their assets in [the subject corporation], and that all such administering occurs exclusively in New York,"

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[2] The court's exact words where if "there is nothing in the record to undermine the parent's claim that the two corporations were separately incorporated, had separate boards of directors, kept separate accounting and tax records, and had separate facilities and operational personnel. . ." *Taber Partners, I v. Merit Builders, Inc.*, 987 F.2d 57 at 62 (quoting *Walker*, 569 F.2d at 1171).

was domiciled in New York under either of the three tests. 987 F.2d at 63. In any case, it is clear that "what is sought, except in rare circumstances where the corporate veil is properly disregarded, is the operational center of the corporation in question, giving proper regard to the corporate identity—not necessarily the ultimate 'nerve center,' in the sense of the place where the real power resides." *Topp v. CompAir Inc.*, 814 F.2d at 835 n.4.

In this particular case, the Plaintiffs do not argue that the corporate veil between Star-Kist and Star-Kist Caribe has been disregarded by the companies. Accordingly, the Court disregards Star-Kist's parent status from the determination of Star-Kist Caribe's principal place of business. For that purpose, the Court shall only consider the evidence in the record as provided by the parties: (1) the unsworn statements under penalty of perjury signed by Janet Rich, Star-Kist's Corporate Secretary and Alfredo Archilla, Star-Kist Caribe's Vice-President and General Manager; (2) Star-Kist Caribe's Certificate of Incorporation; (3) Defendants' answers to the interrogatories submitted by the Plaintiffs; (4) Star-Kist's reports filed at the Commonwealth State Department; (5) Plaintiffs' exhibits regarding the meetings of the board of directors, (Docket # 17, Ex. G); (6) letters of resignation by Mr. Charles K. Johnson and Ms. Diane B. Owen, (*Id.*); and (7) Defendants' supplementary answers to interrogatories. (Docket # 17, Ex. I).

All of these documents show that Star-Kist Caribe owns and operates a canning/manufacturing plant in Mayagüez, Puerto Rico and that the company sells canned tuna primarily to its parent company, Star-Kist. However, during the period prior to filing the complaint (from 1998-1999) only one of three Star-Kist Caribe's Vice Presidents had offices in Puerto Rico (Mr. Alfredo Archilla); (Docket # 17, Ex. G). Although Defendants' answers to the interrogatories are incomplete, the Court can gather that during the year 2000, only Star-Kist Caribe's President and Director, Mr. Alfredo Archilla, has offices in Puerto Rico. Star-Kist

Caribe's two Vice-Presidents, Messrs. Edward J. McMenamin and Barry A. Mills have offices in Pittsburgh, PA and Newport, KY. Star-Kist's Corporate Secretary, and its three Corporate Assistant Secretaries have offices in Pittsburgh, PA and Newport, KY. Its two Assistant Treasurers for the year 2000 have offices in Long Beach, CA and Pittsburgh, PA. (*Id.*) The company's General Manager of Human Resources, Mr. Jim Huffmyer, has offices in Pittsburgh, PA, and its Comptroller, Mr. Steve Reyburn also has offices in Pittsburgh, PA. (*Id.*) In addition, the official business records, including corporate books and minutes are kept under the custody of Ms. Kimberly Kirkpatrick, Corporate Secretary, in Pittsburgh, PA.

From this evidence the Court can gather that Star-Kist Caribe's principal place of business is not as clear or easy to determine as the Defendants would have the Court believe. In addition, the Court notes that the Defendants, being in control of the information which can clarify the issue, have only filed two unsworn declarations under penalty of perjury, one by Janet Rich, Star-Kist's Corporate Secretary, and the other by Alfredo Archilla, Star-Kist Caribe's Vice-President and General Manager, both of which—with identical wording—provide conclusory statements regarding the facts in controversy. However, the unsworn declarations do state that Star-Kist Caribe pays taxes in Puerto Rico, a fact that is corroborated by Star-Kist Caribe's independent audit of financial statements for the fiscal year 1998-9. (PricewaterhouseCoopers, LLP, financial report, Docket #23, Ex. 3).

Plaintiffs argue that applying the "nerve center test" the Court should find that Star-Kist Caribe's controlling activities occur either in Pennsylvania or Kentucky, where most of its officers and directors have offices. No discovery was provided by the Defendants regarding the location of the company's board meetings despite its being requested, but available evidence would lead the Court to believe that they do not take place in Puerto Rico at all. However, even if that

were the case, the Court finds that Star-Kist Caribe' principal place of business is Puerto Rico, because the focus of the Court's inquiry is not where the ultimate power resides, but rather, where the day-to-day management of the corporation takes place, and on that issue the evidence indicates that it takes place in Puerto Rico.

In particular, the nerve center is preferable for corporations with "complex and farflung activities." *Topp v. CompAir, Inc.*, 814 F.2d at 834. For example, in *Topp*, the First Circuit applied the "nerve center" test to ascertain the principal place of business of a corporation which had no manufacturing, purchasing or sales facilities. Rather, the corporation's "principal function [was] to provide administrative and financial services to several of its subsidiaries." 814 F.2d at 834. The subsidiaries were located in five different states and the court there noted that "[a] percentage of CompAir Inc.'s servicing activities devoted to a given subsidiary will vary from time to time, [therefore] its own nerve center (the location from which CompAir Inc. controls and directs its servicing activities) is the most realistic indication of its principal place of business." *Id.* On the other hand, the First Circuit found that the other two tests which focus on the location of the physical operations of the corporation (i.e., factories, wharehouses, sales offices) were not appropriate in that case. *Id.* n. 3.

In this case however, Star-Kist Caribe is a manufacturer of canned products who owns and operates a plant in Mayagüez. That is definitely a determinative factor for the principal place of business under the "the locus of the operations of the corporation" test. *Id.* A third test, the "center of corporate activity test" focuses on the day-to-day management of the corporation, which pursuant to Alfredo Archilla's unsworn declaration under penalty of perjury, is Puerto Rico, where the company's packaging center is managed. (Docket # 2, Attach. 2 ¶¶ 8-9, 11).

Although the Court is inclined to find that Star-Kist Caribe's principal place of business is Puerto Rico after applying the "locus of operations of the corporation" test and the "center of corporate activity" test, both Plaintiffs and Defendants have engaged in a discussion of the nerve center test and its applicability to this case. That test requires the Court to consider:

> [1] Location of corporate headquarters;
>
> [2] location of directors meetings;
>
> [3] location from where corporate income tax returns are filed;
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> [4] location of corporate records;
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> [5] location of principal bank accounts;
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> [6] location of corporate personnel who direct the daily operations of the corporation;
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> [7] place where major policy decisions are made;
>
> [8] place which is designated in the charter or other corporate documents as the official headquarters of the company.

Topp v. CompAir, Inc., 814 F.2d at 837-8. The Defendants concede that its directors do not regularly meet in Puerto Rico (Factor # 2, above). In addition, the discovery revealed that the corporation's official business records and minutes are kept under the custody of the Corporate Secretary, Ms. Kirkpatrick, in Pennsylvania. (Factor 4, above) (*See* Docket # 17, App. G). Moreover, the scarce evidence before the Court indicates that with all probability all major policy decisions are made outside of Puerto Rico. On this issue, Plaintiffs introduced evidence which controverts Defendants' conclusory statement that Star-Kist Caribe's major decisions are made in Puerto Rico, (*See* Docket # 24 at 7),[3] and the

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[3] For example, Plaintiffs introduced evidence showing that with the exception of the Corporation's Vice-President and now President, Alfredo Archilla, all of the Defendants' officers and top executives have offices outside of Puerto Rico. (Docket # 17, App. G). In addition, the

Defendants, being in control of the information pertinent to this issue, failed to produce anything showing that they are in fact made here. Therefore, this is a factor which militates against the Defendants. (Factor # 7, above). Factor number eight (8) also works against the Defendants because the charter and other corporate document: list Delaware as the company's official or principal office. (See Docket # 17, App. G). The other factors point to Puerto Rico as the principal place of business. (Factors ## 1, 3, 5, 6) (*See* Docket # 24, Ex. 1). Although the factors are evenly divided on the "nerve center" test, the Court's finding on the other two tests that Star-Kist Caribe's principal place of business is Puerto Rico, definitely tips the scales against diversity jurisdiction.

B. Indispensable Party

The First Circuit has stated that once a district court has found one of the defendants to be non-diverse for purposes of diversity jurisdiction, it may dismiss the complaint only against that defendant if it is a dispensable party. However, if the defendant is indispensable, then the Court must dismiss the case as a whole, or remand it to state court. *Casas Office Machines, Inc. v. Mita Copystar America, Inc.*, 42 F.3d 668, 675 (1st Cir. 1994).

In this case, the Plaintiffs have alternatively moved the Court to dismiss the complaint only against the non-diverse party—that is, assuming the Court found lack of complete diversity. The Defendants' have opposed this request citing *E&E Investment, Inc v. Simmons Co.*, 169 F.R.D. 467, 470 (D.P.R. 1996), which stands for the proposition that "where the subsidiary is the primary participant in a dispute

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(continued...)

Defendants have conceded that Star-Kist Caribe's Board of Directors does not regularly meet in Puerto Rico. In particular, a decision to transfer all of Star-Kist Caribe's can manufacturing operations to Star-Kist and other Heinz subsidiaries, was a decision not taken by the managing personnel in Puerto Rico. (*Id.*)

involving both the parent and the subsidiary, the subsidiary is an indispensable party." They then argue that "more likely than not" the tuna can involved in this products liability action was manufactured in Puerto Rico, therefore it would be "highly impractical" to dismiss the complaint against Star-Kist Caribe and to maintain the action against its parent company, Star-Kist.

The Plaintiffs have indicated however, that Star-Kist Caribe is a dispensable party to this litigation because Star-Kist and Star-Kist Caribe are joint tortfeasors in a products liability action, and that each entity involved in the chain of distribution is strictly liable to the consumer. (Docket # 17 at 10).

It has indeed long been established that joint tortfeasors are not indispensable parties. *Temple v. Synthes Corp., Ltd.*, 498 U.S. 5, 7; 111 S.Ct. 315, 316 (1991) ("It has long been the rule that it is not necessary for all joint tortfeasors to be named as defendants in a single lawsuit.") (citing *Lawlor v. National Screen Service Corp.*, 349 U.S. 322, 329-330, 75 S.Ct. 865, 869, 99 L.Ed. 1122 (1955); *Bigelow v. Old Dominion Copper Mining & Smelting Co.*, 225 U.S. 111, 132, 32 S.Ct. 641, 644, 56 L.Ed. 1009 (1912)). The issue of whether or not Star-Kist Caribe is an indispensable party based on the fact that it might have canned and distributed the actual can involved in this litigation, is not dispositive of the question because Plaintiffs have plead a cause of action in products liability, where as a matter of public policy, each and every entity involved in the chain of distribution is strictly liable to the consumer. *See Ferrer v. Gen. Motors*, 100 D.P.R. 246, 257-8 (1971).

Under Fed.R.Civ.P. 19(a), a party shall be joined to an action if:

> (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the

> person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of obligations by reason of the claimed interest.

Fed.R.Civ.P. 19(a).

In turn, Rule 19(b) of the Federal Rules of Civil Procedure provides that:

> If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

Fed.R.Civ.P. 19(b).

The Defendants cite the case of *H.D. Corp. of Puerto Rico v. Ford Motor Co.*, 792 F.2d 987, 993 (1st Cir. 1986), for the proposition that where a parent and subsidiary are both parties to a suit, the action cannot be dismissed against the parent, and maintained against the subsidiary because "it would be highly impractical to permit plaintiffs' action to proceed solely against [the parent]." However, placing that asseveration in the context of that case, the First Circuit found the non-diverse/parent party indispensable based on the following: first, that the parent had a substantial interest in the outcome of the suit; and second, that "it is clear from the face of the complaint that plaintiffs' commonwealth law claims are largely directed against the parent company." *Id.*

The case involved various claims of breach of a dealership contract of which the parent was a signatory. In addition, the parent company was very much involved in the decision to terminate the dealership agreement. *Id.* Therefore, in that case it was "highly impractical" to permit plaintiffs' action to proceed solely against the subsidiary. *Id.*

Those circumstances are not present in this case however. In this case, the defendant does not controvert Plaintiffs' allegations that Star-Kist and Star-Kist Caribe are joint tortfeasors. On this point, the case-law is clear that "Rule 19 treats joint tortfeasors differently than persons jointly liable under a contract, where the general rule is that all those with a substantial interest in the contract must be joined." *H&E Investment, Inc. v. Simmons Company*, 169 F.R.D. 467 (D.P.R. 1996). In fact, the First Circuit has stated that "if one thing is clear in respect to Rule 19, it is that, unlike a person vicariously liable in tort, a person potentially liable as a joint tortfeasor is not a necessary or indispensable party, but merely a permissive party subject to joinder under Rule 20." *Pujol v. Shearson American Exp., Inc.*, 877 F.2d 132, 137 (1st Cir. 1989) (citations omitted).

Finally, Plaintiffs complaint does not make specific allegations against Star-Kist Caribe. Rather, Plaintiffs claim that the tuna can included in the lunch kit is a dangerous product, specially to children, and that there were no warnings in that respect. For a finding on the merits of this allegation, the place of manufacture is irrelevant. Therefore, Star-Kist and Star-Kist Caribe's motion to dismiss, (Docket #2), is **GRANTED IN PART AND DENIED IN PART**. Judgment shall be entered dismissing the complaint against Star-Kist Caribe, in accordance with the terms of this Opinion and Order.

SO ORDERED.

In San Juan, Puerto Rico, this 31st day of January, 2001.

/s/ Salvadore E. Casellas
SALVADORE E. CASELLAS
United States District Judge

[Dated Feb. 28, 2001]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MARIA DEL ROSARIO ORTEGA and SERGIO BLANCO, by themselves and representing minors BEATRIZ BLANCO ORTEGA and PATRIZIA BLANCO ORTEGA, Plaintiffs	*	CIVIL NO. 00-1475 (SEC)
vs.	*	CIVIL ACTION
STAR-KIST FOODS , INC.; and INSURANCE COMPANIES XYZ Defendants	*	**Plaintiffs Demand Trial By Jury**

FIRST AMENDED COMPLAINT

TO THE HONORABLE COURT:

Plaintiffs, through their undersigned attorneys, for their cause of action respectfully allege as follows:

I

Jurisdiction and Venue

1. This is a tort action based on products liability due to the negligence of the defendant, Star-kist Foods, Inc. ("Starkist"), who markets and sells in Puerto Rico lunch kits which contain a pull-top easy-open can of tuna that when opened have a sharp edge lid which is dangerous to people, specially children, and have no warning to this respect.

2. On April 21, 1999, one of the before mentioned lids injured Beatriz Blanco Ortega's right-hand little finger when she opened one of the mentioned cans of tuna.

3. Plaintiffs are all citizens of Puerto Rico.

4. Defendant is a citizen of a state other than Puerto Rico.

5. The matter in controversy exceeds $75,000 exclusive of interests and costs.

6. The can of tuna was sold in Puerto Rico.

7. The cause of action arose in Puerto Rico and the witnesses are in Puerto Rico.

8. Based on the before stated, jurisdiction of this court lies in diversity of citizenship, pursuant to 28 U.S.C. Sec. 1332(a) and venue lies in this district.

II

The Parties

9. Starkist is a corporation, organized under the laws of a state other than Puerto Rico, with principal offices in Newport, Kentucky, dedicated to the manufacture, distribution, and sale of processed tuna.

10. Codefendants XYZ Insurance Companies are the fictitious names of the insurance companies, which had issued and maintained in full force and effect an insurance policy on behalf of Starkist under whose terms and conditions they are jointly and severally liable with its insured for the facts and damages herein, and assumes the citizenship of their insured. Once the identities of said insurance companies are known, the plaintiffs will request leave to amend the complaint to incorporate their correct names.

11. Plaintiff Maria del Rosario Ortega (Mrs. Rosario) is a resident of Puerto Rico and is the divorced mother and legal guardian with custody over her minor daughter, Beatriz Blanco Ortega and Patrizia Blanco Ortega.

12. Plaintiff Sergio Blanco (Mr. Blanco) is a resident of Puerto Rico and is the divorced father and legal guardian of Beatriz Blanco Ortega.

13. Plaintiff, Beatriz Blanco Ortega ('Beatriz") is ten (10) years old, a resident of Puerto Rico, and the youngest daughter Mrs. Ortega and Mr. Blanco.

14. Plaintiff Patrizia Blanco Ortega is a minor and the oldest sister of Beatriz Blanco Ortega; she is a citizen of Puerto Rico.

III
The Facts

15. Starkist is engaged in interstate commerce as a manufacturer and or packer and or distributor and or retailer of canned tuna that is sold to the public or consumers through various wholesalers and or retailers.

16. For various years, Starkist has been doing business and selling canned tuna in different forms and methods in Puerto Rico, either by itself or through various wholesalers, retailers or distributors.

17. On or about April 21, 1999, while Beatriz was at her school lunch break, at "Academia Perpetuo Socorro", in San Juan, Puerto Rico, she opened a can of tuna in a Starkist Charlie's Tuna Salad Lunch Kit ("the lunch kit") which is manufactured and or placed in the market for sale and or distribution by the defendant.

18. The lunch kit had been purchased a few days before by Beatriz's mother, Mrs. Ortega, at "Supermercado Amigo", located at "Galeria Los Paseos" Shopping Mall, where she does all of her groceries' shopping.

19. Mrs. Ortega had selected and placed the lunch kit in her daughter's lunch box because, among other reasons, the lunch kit was represented by Starkist to be of good taste, enjoyable, and easy to prepare, which made it ideal for children to bring to school for lunch brakes.

20. Beatriz opened the lunch kit's can of tuna following the instructions of the package.

21. While doing so she slit her right-hand little finger with the sharp edge of the lid of the can, which caused her injuries.

22. Beatriz's injury was of such nature that she had to be taken by her mother to the Emergency Room of the Ashford Presbiterian Hospital in San Juan, Puerto Rico, where she was referred to a hand's specialist.

23. The hand's specialist determined that Beatriz finger's flexor tendon and digital nerve needed to be repaired and recommended surgery.

24. Because there were no operating rooms available, Beatriz had to wait for surgery until April 22, 1999.

25. After surgery Beatriz suffered difficulties as a result of the anesthesia.

26. Thereafter Beatriz had to remain with a cast on her right arm that had a string sown to her finger nail in order to protect the tendon and keep the finger bent which gave her a weird appearance.

27. In order to recover the movement lost in her right-hand little finger Beatriz had to receive physical therapy which caused her pain and anguish.

28. However, as of this date, Beatriz's finger has not fully recovered and is still bent which makes her hand to look awkward and strange.

IV
The Negligence and Direct Cause

29. The proximate and direct cause of Beatriz's injures is Starkist's negligence in manufacturing and or marketing and or distributing for public consumption a product that is unsafe to the consumer, particularly children.

30. Starkist also omitted a notice of precaution to be taken by children or for parents to be given to children, when opening a can that is unreasonably dangerous to a child, or to parents as consumers.

31. When Beatriz opened the can of tuna she was unaware of any danger to which she would be exposed as a result thereof.

32. All of the above caused injuries and damages to the plaintiffs.

33. The dangerous situation created by the defendants to which Beatriz was exposed was not known by her who at the time was nine years old.

34. Beatriz's parents relied on the safety of the product manufactured and or marketed and or distributed by the defendants.

35. Starkist was negligent in breaching its duty to place in the open market a product that is fit for public consumption, particularly children.

36. The breach of Starkist's duty was the direct cause of the injuries and damages sustained by the plaintiffs.

V

The Damages

37. Beatriz is a ten (10) year-old child who lives with her mother, has a good relationship with her father, attends school every day, and used to practice volleyball.

38. Due to defendants' negligence, Beatriz suffered a painful cut in her right-hand little finger and went through the horrifying experience of watching herself bleed profusely with no control over it.

39. This experience traumatized and caused her great emotional pain and suffering to the extent that she does not eat tuna fish anymore.

40. After surgery Beatriz had to suffer the discomfort and effect of general anesthesia; then for a prolonged period of time she underwent painful therapy.

41. Because of defendants' negligence, Beatriz's finger is bent, her hand appearance is awkward, and she has problems when writing.

42. To prevent her finger from bending, Beatriz needs to use a cast which she rejects and has developed antipathy to.

43. Due to defendants's negligence, Beatriz' parents and sister went through the anguishing experience of watching their younger daughter and sister being injured, nervous and in extreme pain, which has traumatized and caused them great emotional pain and suffering.

44. Both, Mrs. Ortega and Mr. Blanco have incurred in the following medical expenses:

45. Plaintiffs' damages are estimated in the following amounts:

A. Beatriz:

(1) Physical damages, not less than $500,000

(2) Emotional damages, not less than $400,000

B. Mrs. Ortega:

(1) Incurred medical expenses as of the date of this complaint $4,927.07

(2) Estimated future medical expenses $25,000

(3) Mental anguish and suffering $250,000

C. Mr. Sergio Blanco's emotional damages are estimated in the sum of $175,000

D. Patrizia Blanco Ortega emotional damages estimated in the sum of $150,000

WHEREFORE, plaintiffs pray for a judgment in their favor and against defendants, ordering payment of the amounts above mentioned, together with interests thereon from the date of filing of the present complaint, plus costs, and reasonable attorney's fees.

PLAINTIFFS DEMAND TRIAL BY JURY.

In San Juan, Puerto Rico, this 28th day of February, 2001.

I HEREBY CERTIFY that, on this same date, a true and exact copy of the foregoing was mailed to Alexander H. Bopp, Esq., Indiano & Williams, P.S.C,, Hato Rey Tower, Suite 2101, 268 Muñoz Rivera Avenue, Hato Rey, Puerto Rico 00918.

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Freddie Pérez-González
UDSC-PR 119005

[Dated April 10, 2001]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MARIA DEL ROSARIO ORTEGA and SERGIO BLANCO, by themselves and representing minors BEATRIZ BLANCO ORTEGA and PATRIZIA BLANCO ORTEGA, Plaintiffs,	*	CIVIL NO. 00-1475 (SEC)
vs.	*	**Plaintiffs Demand Trial By Jury**
STAR-KIST FOODS, INC., and INSURANCE COMPANIES XYZ, Defendants.	*	

****

ANSWER OF DEFENDANT STAR-KIST FOODS, INC. TO PLAINTIFFS' FIRST AMENDED COMPLAINT

TO THE HONORABLE COURT:

NOW APPEARS defendant, STAR-KIST FOODS, INC. (hereinafter Star-Kist Foods), through the undersigned attorneys, and respectfully state, allege and request as follows:

I. JURISDICTION AND VENUE

1. The allegations contained in paragraph 1 of the Complaint are denied.

2. The allegations contained in paragraph 2 of the Complaint are denied.

3. The allegations contained in paragraph 3 of the Complaint are admitted.

4. The allegations contained in paragraph 4 of the Complaint are admitted as they pertain to Star-Kist Foods.

5. The allegations contained in paragraph 5 of the Complaint are denied.

6. The allegations contained in paragraph 6 of the Complaint are denied as beyond the knowledge of Defendant.

7. The allegations contained in paragraph 7 of the Complaint are denied.

8. The allegations contained in paragraph 2 of the Complaint are denied.

II. THE PARTIES

9. The allegations contained in paragraph 9 of the Complaint are denied.

10. The allegations contained in paragraph 10 of the Complaint are denied.

11. The allegations contained in paragraph 11 of the Complaint are admitted based on information and belief.

12. The allegations contained in paragraph 12 of the Complaint are admitted based on information and belief.

13. The allegations contained in paragraph 13 of the Complaint are admitted based on information and belief.

14. The allegations contained in paragraph 14 of the Complaint are admitted based on information and belief.

III. THE FACTS

15. The allegations contained in paragraph 15 of the Complaint are denied.

16. The allegations contained in paragraph 16 of the Complaint are denied.

17. The allegations contained in paragraph 17 of the Complaint are denied.

18. The allegations contained in paragraph 18 of the Complaint are denied as beyond the scope of Defendant's knowledge.

19. The allegations contained in paragraph 19 of the Complaint are denied.

20. The allegations contained in paragraph 20 of the Complaint are denied as beyond the scope of Defendant's knowledge.

21. The allegations contained in paragraph 21 of the Complaint are denied.

22. The allegations contained in paragraph 22 of the Complaint are denied as beyond the scope of Defendant's knowledge.

23. Paragraph 23 of the Amended Complaint contains a typographical error rendering it incoherent. To the extent a responsive pleading is possible, the allegations contained in paragraph 23 of the Complaint are denied as beyond the scope of Defendant's knowledge.

24. The allegations contained in paragraph 24 of the Complaint are denied as beyond the scope of Defendant's knowledge.

25. The allegations contained in paragraph *25* of the Complaint are denied as beyond the scope of Defendant's knowledge.

26. The allegations contained in paragraph 26 of the Complaint are denied as beyond the scope of Defendant's knowledge.

27. The allegations contained in paragraph 27 of the Complaint are denied as beyond the scope of Defendant's knowledge.

28. The allegations contained in paragraph 28 of the Complaint are denied as beyond the scope of Defendant's knowledge.

IV. THE NEGLIGENCE AND DIRECT CAUSE

29. The allegations contained in paragraph 29 of the Complaint are denied.

30. The allegations contained in paragraph 30 of the Complaint are denied.

31. The allegations contained in paragraph 31 of the Complaint are denied.

32. The allegations contained in paragraph 32 of the Complaint are denied.

33. The allegations contained in paragraph 33 of the Complaint are denied

34. The allegations contained in paragraph 34 of the Complaint are denied.

35. The allegations contained in paragraph 35 of the Complaint are denied.

36. The allegations contained in paragraph 36 of the Complaint are denied.

V. DAMAGES

37. The allegations contained in paragraph 10 of the Complaint are outside the scope of knowledge of the defendant, Star-Kist Foods, Inc. As such, the allegations are denied.

38. The allegations contained in paragraph 38 of the Complaint are denied.

39. The allegations contained in paragraph 39 of the Complaint are denied.

40. The allegations contained in paragraph 40 of the Complaint are denied.

41. The allegations contained in paragraph 41 of the Complaint are denied.

42. The allegations contained in paragraph 42 of the Complaint are denied.

43. The allegations contained in paragraph 43 of the Complaint are denied.

44. The allegations contained in paragraph 44 of the Complaint are denied. To the extent paragraph 44 indicates that Mrs. Ortega and Mr. Blanco incurred no medical expenses, Defendant accepts this allegation as true.

45. The allegations contained in paragraph 45 of the Complaint are denied.

VI. AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The allegations of Plaintiffs' Complaint fail to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are estopped due to their negligence in willfully destroying the evidence which is at the heart of their complaint.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the applicable statutes of limitation and/or statutes of repose.

FOURTH AFFIRMATIVE DEFENSE

Star-Kist Foods asserts that its products were not unreasonably dangerous, nor is Star-Kist Foods in any way negligent and Plaintiffs cannot recover under their complaint, because the actions and products referred to in Plaintiffs' Complaint conformed to the state of the art and the applicable standards of care for the design and manufacture of such or similar products.

FIFTH AFFIRMATIVE DEFENSE

In the alternative, and in the event the Plaintiffs have suffered any legally cognizable injury or damages, which is denied, there is no proximate or other causal connection between the actions or failure to act on the part of Star-Kist Foods and the damages, injuries and/or losses alleged by Plaintiffs.

SIXTH AFFIRMATIVE DEFENSE

The occurrences and injuries made the basis of this lawsuit were proximately caused and/or produced by the acts and omissions of a third person or persons or party or parties over whom Star-Kist Foods had no control or right of control

at the time of the occurrence or injury in question, and such conduct was the proximate and/or sole proximate, and/or producing and/or sole producing and/or new and independent cause of any injuries or damages to the Plaintiffs.

SEVENTH AFFIRMATIVE DEFENSE

Star-Kist Foods asserts the defense of contributory or comparative negligence and alleges that the damages and injuries alleged in Plaintiffs' Complaint were legally or proximately caused in whole or in part by the negligence, fault, negligence per se, assumption of the risk, product alteration, misuse, and culpable conduct of other persons or parties who failed to exercise the same degree of care and caution, as well as common sense, for their safety, as would have been exercised by persons using ordinary care, caution and common sense in the same or similar circumstances. Star-Kist Foods is therefore entitled to have the court and jury apply the doctrine of comparative negligence established by Commonwealth of Puerto Rico Civil Code §5141 and other relevant statutes and code sections to reduce any judgment against Star-Kist Foods by the degree of negligence or fault attributable to any other person or party.

EIGHTH AFFIRMATIVE DEFENSE

Star-Kist Foods asserts that Plaintiffs' injuries and damages, if any, are the result of the failure of Plaintiffs to exercise that degree of care for their own personal health and safety that a reasonably prudent person would have exercised under the same or similar circumstances.

NINTH AFFIRMATIVE DEFENSE

Any injuries or damages allegedly sustained by Plaintiffs were caused in whole or in part by preexisting physical, mental, emotional and psychological conditions of the plaintiffs for which Star-Kist Foods has no legal responsibility or liability.

TENTH AFFIRMATIVE DEFENSE

If Plaintiffs sustained the injuries or incurred the expenses alleged, the same may have been caused, in whole or in part, by an operation of nature or act of God and are not the result of Star-Kist Foods' conduct.

ELEVENTH AFFIRMATIVE DEFENSE

Star-Kist Foods asserts that this action is governed by the "learned intermediary," "informed intermediary" and/or "sophisticated user" doctrines and that Plaintiffs' claims are barred, in whole or in part, because Star-Kist Foods had no obligation to warn Plaintiffs directly of any condition associated with the products in question.

TWELFTH AFFIRMATIVE DEFENSE

If Plaintiffs sustained the injuries or incurred the expenses alleged in Plaintiffs' Complaint, the same may have been caused by an idiosyncratic reaction, without any negligence, defect failure on the part of Star-Kist Foods.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs may have failed to join identifiable and indispensable parties necessary for proper adjudication.

FOURTEENTH AFFIRMATIVE DEFENSE

If Star-Kist Foods is held liable to plaintiffs, which liability is specifically denied, Star-Kist Foods would be entitled to a set-off for all sums of money received or available from or on behalf of any tort-feasor for the same damages as alleged in Plaintiffs' Complaint.

FIFTEENTH AFFIRMATIVE DEFENSE

At the time of the occurrence of the injuries alleged by Plaintiffs, Star-Kist Foods' products were not defective or unreasonably dangerous in their design, manufacture or marketing. Moreover, the warnings and instructions accompanying Star-Kist Foods' products at the time of the occurrence of the injuries alleged by Plaintiffs were adequate as a matter of law.

SIXTEENTH AFFIRMATIVE DEFENSE

Star-Kist Foods complied with all governmental standards and regulations in the manufacture, sale, registration and labeling of the product.

SEVENTEENTH AFFIRMATIVE DEFENSE

Any and all damages alleged by Plaintiffs may have been caused by misuse or abuse of Star-Kist Foods' products, failure to use Star-Kist Foods' products properly, and/or alteration or negligent use of Star-Kist Foods' products, for which Star-Kist Foods is not legally or factually responsible.

EIGHTEENTH AFFIRMATIVE DEFENSE

Star-Kist Foods is not engaged in the manufacturing, nor the packing, of tuna cans.

WHEREFORE, Defendant Star-Kist Foods Corporation requests that Plaintiffs take nothing by this action, that the court dismiss this action with prejudice, that Star-Kist Foods recover its costs and that Star-Kist Foods have such other and further relief to which it may show itself to be justly entitled.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 10th day of April, 2001.

I HEREBY CERTIFY that a true copy of the forgoing document has been sent by regular mail to **Freddie Pérez-Gonzalez**, P.O. Box 193729, San Juan, Puerto Rico 00919-3729.

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/s/ Alexander H. Bopp
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Supreme Court, U.S.
FILED
DEC 6 - 2004
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(4)

No. 04-79

IN THE

Supreme Court of the United States

MARIA DEL ROSARIO ORTEGA, SERGIO BLANCO, by themselves and representing minors BEATRIZ BLANCO-ORTEGA AND PATRIZIA BLANCO-ORTEGA,

Petitioners,

v.

STAR-KIST FOODS, INC,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the First Circuit

BRIEF FOR PETITIONERS

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Counsel for Petitioners

December 6, 2004

QUESTION PRESENTED

Whether, in a civil diversity action in which the claims of one plaintiff meet the amount-in-controversy threshold, 28 U.S.C. § 1367 authorizes the district courts to exercise supplemental jurisdiction over the related claims of additional diverse plaintiffs who do not satisfy the amount-in-controversy requirement.

PARTIES TO THE PROCEEDING

The parties to the proceeding below are contained in the caption to this case.

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BRIEF FOR PETITIONERS

The supplemental-jurisdiction statute sets out determinate rules defining federal-court jurisdiction over nonfederal claims where at least one claim in the case is within the original jurisdiction of the federal courts. In a diversity case, where the parties named in the complaint satisfy the requirement of complete diversity and at least one plaintiff presents claims satisfying the amount-in-controversy requirement, those rules unambiguously confer supplemental jurisdiction over the related claims of other diverse plaintiffs who are voluntarily joined in the complaint under Rule 20, whether or not their claims satisfy the amount-in-controversy requirement. This result is not only compelled by the text of the statute, but forms part of a sensible set of policies embodied in the statute as a whole, which allows efficient joinder of related claims and parties, while preserving the requirement of complete diversity. There is no justification in policy or legislative history to contort the language of the statute, as did the court below, in order to produce a result at odds with its plain meaning.

OPINIONS BELOW

The opinion of the court of appeals is reported at 370 F.3d 124. The opinion of the district court is reported at 213 F. Supp. 2d 84, and an order of the district court denying rehearing is unreported.

JURISDICTION

The court of appeals entered judgment on June 2, 2004. The petition for writ of certiorari was filed on July 16, 2004, and granted on October 16, 2004. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES AND RULE INVOLVED

This case involves § 1367 of Title 28, United States Code, which provides in pertinent part:

> (a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in

any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

This case also involves § 1332 of Title 28, United States Code, which provides in pertinent part:

> (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between—
>
> (1) citizens of different States; . . . .

This case also involves Rule 20 of the Federal Rules of Civil Procedure, which provides in pertinent part:

> **(a) Permissive Joinder.** All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons (and any vessel, cargo or other property subject to admiralty process in rem) may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

STATEMENT OF THE CASE

A. Section 1367 Codified The Common-Law Doctrines Of Pendent And Ancillary Jurisdiction By Providing A New Statutory Basis For Jurisdiction Over Certain Additional Claims And Parties

The supplemental-jurisdiction statute, 28 U.S.C. § 1367, represents the first legislative effort to codify the judicially created doctrines of pendent and ancillary jurisdiction. Historically, these doctrines have permitted the federal courts to exercise jurisdiction over legal claims not otherwise within the courts' statutory grants of subject-matter jurisdiction, when such "supplemental" claims relate in some specified degree to other jurisdictionally sufficient claims contained in the action.

In the traditional nomenclature, pendent jurisdiction refers to jurisdiction over additional claims contained in the plaintiff's complaint, while ancillary jurisdiction refers to jurisdiction over claims subsequently added to an action by a defendant or by a person, such as an intervenor or a third-party defendant, not a party to the original complaint. *See Report to the Federal Courts Study Comm. of the Subcomm. on the Role of the Federal Courts and Their Relation to the States* 546 (1990) [hereinafter *Federal Courts Study Subcommittee Report*], *reprinted in* 1 Federal Courts Study Comm., *Working Papers and Subcommittee Reports* (1990); Richard A. Matasar, *A Pendent and Ancillary Jurisdiction Primer: The Scope and Limits of Supplemental Jurisdiction*, 17 U.C. Davis L. Rev. 103, 104 n.1, 117 & nn.57-58 (1983); *Federal Judicial Code Revision Project* xxii-xxiii (ALI, Tentative Draft No. 2, 1998) [hereinafter *ALI Tentative Draft No. 2*]. Within the category of pendent jurisdiction, pendent-claim jurisdiction involves additional claims by or against the same parties litigating the jurisdictionally sufficient claims, and pendent-party jurisdiction involves additional claims by or against additional parties named in the

complaint. *See Federal Courts Study Subcommittee Report*, *supra*, at 546; William H. Fortune, *Pendent Jurisdiction—The Problem of "Pendenting Parties,"* 34 U. Pitt. L. Rev. 1, 1, 4-5 (1972).

Prior to the enactment of § 1367, no act of Congress authorized the district courts to exercise jurisdiction over claims based solely on their relationship to a case pending in federal court. Nevertheless, in an effort to avoid requiring parties to litigate related claims in different fora, this Court had, by the early part of the twentieth century, endorsed the exercise of pendent and ancillary jurisdiction over such claims in limited circumstances. *See, e.g.*, *Hurn v. Oursler*, 289 U.S. 238 (1933) (pendent claims seeking relief for same wrong); *Moore v. N.Y. Cotton Exch.*, 270 U.S. 593 (1926) (compulsory counterclaims); *Dewey v. West Fairmont Gas Coal Co.*, 123 U.S. 329, 333 (1887) (defendant's related claims against third-party defendant); *Freeman v. Howe*, 65 U.S. (24 How.) 450, 460 (1861) (intervention of party asserting claim to property held by court).

Two mid-century developments heralded a more expansive view of pendent and ancillary jurisdiction. First, the adoption in 1938 of the Federal Rules of Civil Procedure provided new mechanisms by which parties and claims could be added to a civil action and, therefore, new opportunities to test the scope of the judge-made doctrines of ancillary and pendent jurisdiction. *See* Matasar, *supra*, 17 U.C. Davis L. Rev. at 121 & n.81. Then, in *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966), this Court held that the federal courts may exercise jurisdiction over all pendent claims that derive from the same nucleus of operative fact as the jurisdictionally proper claims, such that a plaintiff would ordinarily expect to try both sets of claims in one judicial proceeding. *Id.* at 725.

Although *Gibbs* dealt only with jurisdiction over pendent claims, the lower courts seized on the decision to permit more expansive exercises of jurisdiction over nonfederal

claims asserted by or against pendent parties. *See Moor v. Alameda County*, 411 U.S. 693, 713-14 (1973) ("numerous decisions throughout the courts of appeals since *Gibbs* have recognized the existence of judicial power to hear pendent claims involving pendent parties"); Matasar, *supra*, 17 U.C. Davis L. Rev. at 158 & nn.267-68; Darrell D. Bratton, *Pendent Jurisdiction in Diversity Cases — Some Doubts*, 11 San Diego L. Rev. 296, 297 & n.6 (1974). Thus, following *Gibbs*, pendent-party jurisdiction was asserted in federal-question cases to allow the joinder in the complaint of additional federal-law claims that fell below the then-extant amount-in-controversy requirement,[1] as well as state-law claims over which the court had no independent jurisdiction (either because of lack of diversity between the parties, failure to meet the required amount-in-controversy, or both).[2] Similarly, in diversity cases, pendent-party jurisdiction was routinely invoked to permit the joinder in the complaint of additional state-law claims asserted by or against additional *diverse* parties where the joined claims fell below the amount-in-controversy threshold.[3] In light of the complete-diversity rule of *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806), however, the use of pendent-party jurisdiction to

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[1] *See, e.g., Almenares v. Wyman*, 453 F.2d 1075, 1083 (2d Cir. 1971); *Haddon Township Bd. of Educ. v. N.J. Dep't of Educ.*, 476 F. Supp. 681, 686-88 (D.N.J. 1979).

[2] *See, e.g., Astor-Honor, Inc. v. Grosset & Dunlap, Inc.*, 441 F.2d 627, 629-30 (2d Cir. 1971); *Shannon v. United States*, 417 F.2d 256, 263 (5th Cir. 1969); *cf. Leather's Best, Inc. v. S.S. Mormaclynx*, 451 F.2d 800, 809-11 (2d Cir. 1971) (pendent-party jurisdiction over state-law claims in case arising under admiralty jurisdiction).

[3] *See, e.g., Beautytuft, Inc. v. Factory Ins. Ass'n*, 431 F.2d 1122, 1128 (6th Cir. 1970); *Hatridge v. Aetna Cas. & Surety Co.*, 415 F.2d 809, 816-17 (8th Cir. 1969); *Stone v. Stone*, 405 F.2d 94, 96-98 (4th Cir. 1968); *Jacobson v. Atlantic City Hosp.*, 392 F.2d 149, 152-55 (3d Cir. 1968).

join claims by and against additional *non-diverse* parties was "not . . . well-received."[4]

The lower courts also continued to exercise ancillary jurisdiction over claims added to lawsuits by defendants and third parties. But just as pendent-party jurisdiction was denied in the context of non-diverse pendent parties, it was generally accepted that ancillary jurisdiction ought not to be exercised in circumstances that enabled plaintiffs to circumvent the complete-diversity requirement of *Strawbridge* by relying on ancillary jurisdiction to assert claims that, due to incomplete diversity, could not have been included in the complaint. *See* Bratton, *supra*, 11 San Diego L. Rev. at 306-13 (discussing limitations on ancillary jurisdiction that prevent violation of the complete-diversity rule "through indirection"); Note, *Diversity Requirements in Multi-Party Litigation*, 58 Colum. L. Rev. 548 (1958) (surveying pre-*Gibbs* case law and concluding that the doctrine of ancillary jurisdiction is and ought to be applied in diversity actions in such a way as to prevent plaintiffs from circumventing the complete-diversity requirement). *But see Supreme Tribe of Ben-Hur v. Cauble*, 255 U.S. 356 (1921) (endorsing ancillary jurisdiction over claims of non-diverse absent class members). This Court endorsed such a limitation on ancillary jurisdiction in *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365 (1978), when it rejected the exercise of jurisdiction over ancillary state-law claims filed by a plaintiff against an impleaded non-diverse

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[4] *J.M. Res. Inc. v. Petro-Pak Res. Ltd.*, 581 F. Supp. 629, 630-31 (D. Colo. 1984); *see also* Fortune, *supra*, 34 U. Pitt. L. Rev. at 18 (criticizing decisions that failed to distinguish between claims falling below the jurisdictional amount and those involving the addition of non-diverse parties); Bratton, *supra*, 11 San Diego L. Rev. at 313 (arguing that, in view of the complete-diversity requirement, "pendent jurisdiction is not appropriate as to claims by or against non-diverse persons").

third-party defendant on the ground, among others, that the exercise of such jurisdiction would enable plaintiffs to evade the requirement of complete diversity by omitting non-diverse defendants from the complaint and asserting claims against them after their anticipated impleader. *Id.* at 373-77.

This Court also responded to the lower-court rulings extending *Gibbs* with several decisions restraining, in certain respects, the exercise of pendent-party and ancillary jurisdiction where such jurisdiction had not been authorized by Congress. Thus, in *Zahn v. International Paper Co.*, 414 U.S. 291 (1973), the Court reaffirmed (and extended to the class-action context) the pre-*Gibbs* rule of *Clark v. Paul Gray, Inc.*, 306 U.S. 583 (1939), which had prohibited the exercise of jurisdiction over pendent-party claims that did not satisfy the amount-in-controversy requirement. *Zahn*, 414 U.S. at 294-96.[5] Then, in *Aldinger v. Howard*, 427 U.S. 1 (1976), a federal-question case, the Court rejected the exercise of jurisdiction over state-law claims against a pendent-party defendant where the defendant fell outside the class of persons liable under the substantive federal statute, 42 U.S.C. § 1983, from which federal-court jurisdiction derived. 427 U.S. at 16-18; *see also Kroger*, 437 U.S. at 367-68.

These decisions cast serious doubt on the continuing validity of judge-made supplemental-jurisdiction doctrines, *see, e.g., Bernstein v. Lind-Waldock & Co.*, 738 F.2d 179, 187 (7th Cir. 1984) ("pendent party jurisdiction is an embattled concept these days"), and the other shoe dropped

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[5] Although *Zahn* was a diversity case, nothing in the Court's opinion suggested that its holding did not apply equally to federal-question cases, which at the time also had an amount-in-controversy requirement. *See* Pub. L. 85-554, § 1, 72 Stat. 415 (1958) (current version at 28 U.S.C. § 1331). Indeed, the Court in *Zahn* relied heavily on *Clark*, which was a federal-question case. *See* 306 U.S. at 585-86 & n.1.

with this Court's decision in *Finley v. United States*, 490 U.S. 545 (1989). In *Finley*, the Court ruled that the district courts were not authorized to assert pendent-party jurisdiction over state-law claims in a federal-question case, even if the federal claim was within the exclusive jurisdiction of the federal courts. Noting that the Court's "cases do not display an entirely consistent approach with respect to the necessity that jurisdiction be explicitly conferred," and noting further that "[w]hatever we say regarding the scope of jurisdiction conferred by a particular statute can of course be changed by Congress," the Court made clear "that a grant of jurisdiction over claims involving particular parties does not itself confer jurisdiction over additional claims by or against different parties." *Id.* at 556.

Finley was clearly the death knell for pendent-party jurisdiction, and the Court's emphatic statements concerning the need for statutory authorization before jurisdiction could be asserted led several courts and commentators to fear that the holding also imperiled previously accepted exercises of ancillary jurisdiction. *See, e.g., Aetna Cas. & Sur. Co. v. Spartan Mech. Corp.*, 738 F. Supp. 664, 675 (E.D.N.Y. 1990) (holding that *Finley* precluded the exercise of ancillary jurisdiction over claims for contribution by a defendant against an impleaded third-party defendant); *Community Coffee Co. v. M/S Kriti Amethyst*, 715 F. Supp. 772, 773 (E.D. La. 1989) (same); Thomas M. Mengler, *The Demise of Pendent and Ancillary Jurisdiction*, 1990 BYU L. Rev. 247, 259. This in turn led to calls for Congress to provide for a wholesale codification of the common-law doctrines of pendent-claim, pendent-party and ancillary jurisdiction. *See, e.g.*, Mengler, *supra*, 1990 BYU L. Rev. at 287-88. As noted above, these common-law doctrines included limitations intended to preserve the complete-diversity requirement of *Strawbridge*. *See supra* pp. 6-8 & note 4.

Prior to the decision in *Finley*, Congress had established within the Judicial Conference of the United States a fifteen-member Federal Courts Study Committee directed at

reviewing the operation of the judicial system, *see Report of the Federal Courts Study Committee* 31 (1990), and one of the subcommittees, chaired by Judge Posner, responded to *Finley* with a proposal to codify the doctrines of pendent and ancillary jurisdiction. *See Federal Courts Study Subcommittee Report*, *supra*, at 546-68. Focusing on, *inter alia*, the problem of plaintiff circumvention of the complete-diversity requirement, the Subcommittee recommended structuring the statute in such a way as to prevent such evasion, while otherwise broadly authorizing supplemental jurisdiction. *See id.* at 563-67. The Subcommittee viewed its proposal as thereby preserving the rule of *Kroger* while abrogating not only *Finley*, but *Zahn* as well. *See id.* at 561 & n.33, 563, 567; *id.* at 561 n.33 ("From a policy standpoint, [*Zahn*] makes little sense, and we therefore recommend that Congress overrule it.").

Without specifically addressing the recommendations of the Subcommittee, the Federal Courts Study Committee "recommend[ed] that Congress expressly authorize federal courts to hear any claim arising out of the same 'transaction or occurrence' as a claim within federal jurisdiction, including claims, within federal question jurisdiction, that require the joinder of additional parties." *Report of the Federal Courts Study Committee*, *supra*, at 47. Congress responded by drafting a bill that, after a series of revisions, ended up being substantially similar to the Subcommittee's proposal; this bill, with some additional modifications, ultimately became § 1367. *See* Christopher M. Fairman, *Abdication to Academia: The Case of the Supplemental Jurisdiction Statute, 28 U.S.C. § 1367*, 19 Seton Hall Legis. J. 157, 164-70 (1994) (describing the various draft bills leading to enactment of the statute).[6]

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[6] In the course of finalizing § 1367, the drafters expressed substantial

Subsection (a) of § 1367 provides broadly for the exercise of supplemental jurisdiction over all pendent and ancillary claims, including pendent-party claims, provided that the district court has "original jurisdiction" over the action and that the claims in the action and the supplemental claims form part of the same Article III case or controversy.[7]

Subsection (b) then sets forth a series of exceptions to supplemental jurisdiction over ancillary claims in diversity cases. Specifically, where doing so would be "inconsistent" with the requirements of the diversity statute, subsection (b) prevents plaintiffs from asserting claims against persons made parties to the case under specified rules of procedure, and prohibits parties joined or intervening in the action as plaintiffs from asserting claims against defendants. As the House Report accompanying the legislation explained, these exceptions, which notably do not bar the exercise of supplemental jurisdiction over claims asserted by defendants, were designed to prevent plaintiffs from adding through

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concern about the need to preserve the complete-diversity requirement. *See, e.g., Hearing on H.R. 5381 and H.R. 3898 Before the Subcomm. on Courts, Intellectual Property, and the Administration of Justice of the House Comm. on the Judiciary*, 101st Cong., 2d Sess. 89, 94 (1990) (prepared statement of Judge Joseph Weis, Jr.) (commenting on need for language preserving *Strawbridge*'s complete-diversity requirement); *id.* at 716, 717 (letter from Professor Thomas M. Mengler to Professor Thomas D. Rowe, Jr.) (introducing language that barred the exercise of supplemental jurisdiction over claims "when exercising supplemental jurisdiction over such claims would be inconsistent with the complete diversity requirement of section 1332"); *id.* at 723, 735 (Supp. Report of Judicial Conference Comm. on Federal-State Jurisdiction) (noting the need to preserve *Kroger* and criticizing language that would permit addition of non-diverse parties after removal).

[7] As explained in detail below, the requirement of "original jurisdiction" serves, *inter alia*, to preserve the complete-diversity requirement of *Strawbridge* by prohibiting the joinder of non-diverse parties in the complaint. *See infra* Part I(A)(1).

ancillary jurisdiction parties that, because of the complete-diversity rule, could not have been named as co-plaintiffs or co-defendants in the complaint:

> In diversity-only actions the district courts may not hear plaintiffs' supplemental claims when exercising supplemental jurisdiction would encourage plaintiffs to evade the jurisdictional requirement of 28 U.S.C. § 1332 by the simple expedient of naming initially only those defendants whose joinder satisfies section 1332's requirements and later adding claims not within original federal jurisdiction against other defendants who have intervened or joined on a supplemental basis.

H.R. Rep. No. 101-734, at 29 (1990), *reprinted in* 1990 U.S.C.C.A.N. 6860, 6875.

B. The Proceedings Below

This is a diversity action involving personal-injury claims brought by Beatriz Blanco-Ortega, a citizen of Puerto Rico,[8] and three of her family members, also citizens of Puerto Rico, against Star-Kist Foods, Inc., a company then incorporated, and having its principal place of business, in Pennsylvania.[9] The case arises out of injuries suffered in 1990, when Beatriz, then nine years old, cut her finger on a can of Star-Kist tuna while eating lunch at school. Beatriz's injuries ultimately led to surgery on her hand, the prospect of future surgery, and minor permanent disability and scarring.

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[8] "The word 'States', as used in [28 U.S.C. § 1332], includes . . . the Commonwealth of Puerto Rico." 28 U.S.C. § 1332(d).

[9] Because the court below found original jurisdiction over Beatriz's claims, the petitioners in this Court are Beatriz's three family members who were co-plaintiffs in the district court — Maria del Rosario-Ortega, Sergio Blanco, and Patrizia Blanco-Ortega.

In the amended complaint on which the case has gone forward, Beatriz, along with her mother, Maria del Rosario-Ortega, her father, Sergio Blanco, and her sister, Patrizia Blanco-Ortega, sued Star-Kist and its unnamed insurers. Beatriz alleged that she had suffered physical and emotional damages of not less than $900,000. In addition, each of Beatriz's family members sought emotional damages in excess of $75,000, with Beatriz's mother seeking an additional $30,000 in damages for Beatriz's past and future medical expenses.

Star-Kist moved for summary judgment on the ground that none of the plaintiffs had satisfied the $75,000 amount-in-controversy requirement needed to establish federal-court jurisdiction pursuant to § 1332. Applying the "legal certainty" test set forth by this Court in *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 288-89 (1938), and surveying recoveries in similar cases, the district court concluded that it was a legal certainty that none of the plaintiffs could prove damages in excess of $75,000. Accordingly, the district court dismissed the entire case for lack of subject-matter jurisdiction.

The plaintiffs appealed, and the First Circuit (Lynch, J.) affirmed in part and reversed in part. The court first unanimously reversed the district court on the question whether Beatriz had satisfied the amount-in-controversy requirement. The court concluded that, in light of Beatriz's permanent physical impairment and claimed pain and suffering, it could not say to a legal certainty that Beatriz could not recover a jury award larger than $75,000, and that Beatriz's claim should therefore be allowed to go forward. By contrast, the court concluded that it was a legal certainty that the emotional distress claims of Beatriz's family members (even taking into account Beatriz's mother's additional claim for Beatriz's medical expenses) did not meet the $75,000 threshold. Pet. App. 3a-10a.

Next, speaking on behalf of two judges, the court considered whether 28 U.S.C. § 1367 nevertheless permitted the district court to assert supplemental jurisdiction over the claims of Beatriz's family members. It noted that the proper resolution of this issue "is far from clear," and has deeply divided the circuit courts. It observed further that this issue has arisen in two contexts — cases, such as this one, involving the ordinary permissive joinder of multiple plaintiffs under Rule 20 of the Federal Rules of Civil Procedure, and cases involving the claims of absent class members in diversity-only class actions. Pet. App. 11a.

Confining its consideration to the first of these contexts, the court below began its analysis by reviewing the law as it existed before the enactment of § 1367 in 1990. It noted that *Clark v. Paul Gray, Inc.*, 306 U.S. 583 (1939), had required that each plaintiff in a lawsuit must separately satisfy the jurisdictional-amount requirement. The court noted further that the "impetus for Congress's adoption of § 1367 was the Supreme Court's 5-4 decision in *Finley v. United States*, 490 U.S. 545 (1989)," in which this Court had held that the district courts lack jurisdiction over pendent-party state-law claims in federal-question cases. Pet. App. 14a. But while primarily aimed at overturning *Finley*, the court below observed, § 1367's text "can be read to do more than" that — indeed, on its face, § 1367 appears to be "a jurisdictional grant of such apparent breadth" as to have "created confusion in a number of areas in which principles were thought to be well established." Pet. App. 15a (quoting 13B Charles Alan Wright *et al.*, *Federal Practice and Procedure* § 3567.2 (2d ed. 2003)).

The court stated that one such area of resulting confusion involves the continued validity of the Supreme Court's holdings that every plaintiff in a diversity case must meet the jurisdictional-amount requirement. Under one line of reasoning, adopted by the Seventh Circuit in *Stromberg Metal Works, Inc. v. Press Mechanical, Inc.*, 77 F.3d 928 (7th Cir. 1996), § 1367 has been found to overturn the

jurisdictional-amount holding of *Clark* in diversity cases because Congress failed in § 1367(b) "to include Rule 20 plaintiffs among those parties who cannot rely on supplemental jurisdiction where doing so would be inconsistent with § 1332." Pet. App. 15a. Under a second line of reasoning, which the court below ultimately adopted, *Clark* has been found to be preserved by "the requirement in § 1367(a) that the district court must first have 'original jurisdiction' over an action before supplemental jurisdiction can apply, . . . and thus [§ 1367] does not supply supplemental jurisdiction where, as in this case, only one of the named plaintiffs meets the amount in controversy." Pet. App. 16a (citing James E. Pfander, *Supplemental Jurisdiction and Section 1367: The Case for a Sympathetic Textualism*, 148 U. Pa. L. Rev. 109 (1999); *Leonhardt v. W. Sugar Co.*, 160 F.3d 631 (10th Cir. 1998); *Meritcare, Inc. v. St. Paul Mercury Ins. Co.*, 166 F.3d 214 (3d Cir. 1999)).

Applying this latter analysis to the facts of this case, the court reasoned that, because the district court lacked jurisdiction over the claims of Beatriz's family members under the jurisdictional principles articulated in *Clark*, it lacked "original jurisdiction" over the entire action, and the statutory prerequisite for the exercise of supplemental jurisdiction was therefore not met.[10] While this interpretation of § 1367(a) obviated the need for the court to address the exceptions set forth in § 1367(b), the court noted that its interpretation provided an explanation for the omission of Rule 20 plaintiffs from those exceptions.

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[10] The court noted that this reading of "original jurisdiction" is supported by "the settled meaning of identical language in 28 U.S.C. § 1441, the removal statute," which has been interpreted "to prohibit removal unless the entire action, as it stands at the time of removal, could have been filed in federal court in the first instance." Pet. App. 21a.

In support of its interpretation of the statutory language, the court opined that a contrary reading of the statute would necessarily permit the permissive joinder of non-diverse plaintiffs, thereby abrogating the complete-diversity rule of *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806), a "surprising and far-reaching consequence[]" that the court did not believe Congress intended. Pet. App. 27a. Finally, the court concluded that the legislative history of § 1367 supported its conclusion that Congress did not believe that the statute would make significant changes to the law of diversity jurisdiction.

Judge Torruella dissented from the portion of the court's ruling on supplemental jurisdiction, on the ground that it "is contrary to the plain language of § 1367." Pet. App. 33a. He began his analysis by arguing that, because "*Clark* and *Zahn* stand for the same principle," the majority should have addressed the reasoning of the majority of circuits that have concluded in the class-action context that § 1367 authorizes jurisdiction over claims below the jurisdictional amount. He also asserted that if any distinction were to be drawn between the two contexts, the Rule 20 joinder situation is the stronger one for allowing supplemental jurisdiction over such claims. Pet. App. 35a-36a.

Turning to the text of the statute, Judge Torruella explained that the district court had "original jurisdiction" over Beatriz's claim within the meaning of § 1367(a) because she and Star-Kist are diverse and her claim exceeds $75,000. Therefore, the district court also had supplemental jurisdiction over the related claims of Beatriz's family members unless one of the exceptions of § 1367(b) applied. While § 1367(b) excepts claims asserted by plaintiffs made parties pursuant to Rules 19 and 24 of the Federal Rules of Civil Procedure and *against* persons made parties pursuant to, *inter alia*, Rule 20, the claims in this case were being asserted by persons made parties pursuant to Rule 20 and, accordingly, none of the exceptions applied. Judge Torruella criticized the majority's alternative approach for

misinterpreting the concept of original jurisdiction, making other provisions of § 1367 superfluous, and improperly relying on "internally contradictory" legislative history. Pet. App. 39a-45a.

SUMMARY OF THE ARGUMENT

Section 1367(a) contains an affirmative grant of supplemental jurisdiction over all claims — and parties — that are part of the same case or controversy as "any civil action of which the district courts have original jurisdiction." Section 1367(b) withdraws that grant of supplemental jurisdiction over specifically-described claims in diversity cases. These provisions allow supplemental jurisdiction over related claims, and thus avoid piecemeal litigation, but at the same time limit federal jurisdiction over claims whose inclusion would be incongruous with the underlying rationale for allowing the case into federal court in the first place.

With regard to the question in this case — whether in a diversity case where the parties are totally diverse and at least one plaintiff has claims meeting the jurisdictional amount, supplemental jurisdiction extends to the related claims of other named plaintiffs falling short of that amount — the answer is entirely clear from the statute's language. Section 1367(a)'s grant of supplemental jurisdiction is plainly triggered by the fact that, in such a totally diverse case, the claim of the plaintiff who satisfies the amount-in-controversy requirement is within the "original jurisdiction" of the district court. On that basis, § 1367(a) confers supplemental jurisdiction over all claims and parties that "form part of the same case or controversy" — *i.e.*, the claims of Beatriz's family members — unless such jurisdiction is withdrawn by the exceptions enumerated in § 1367(b), which apply when such supplemental jurisdiction "would be inconsistent with the jurisdictional requirements of § 1332." The claims at issue here are not among those exceptions, which include claims "by persons proposed to be

joined as plaintiffs under Rule 19" or "under Rule 24," but not claims by plaintiffs joined voluntarily in the complaint pursuant to Rule 20.

The court below rejected this analysis in part on the ground that "if § 1367 permits the permissive joinder of plaintiffs who cannot meet the amount-in-controversy requirement, then it also permits the joinder of non-diverse plaintiffs." Pet. App. 27a. But that is not so. This Court's cases make clear that there is a world of difference between a complaint as to which all parties are diverse and some plaintiffs but not others meet the amount-in-controversy requirement, and a complaint in which the parties lack complete diversity. In the first instance, the case is within the original jurisdiction of the district court — based on the claim of the party who satisfies all of the requirements of § 1332 — and supplemental jurisdiction is therefore triggered. In the second instance, there is no such case within the original jurisdiction, because, under *Strawbridge*, the presence of non-diverse parties destroys jurisdiction over *all* claims in the case. Thus, § 1367(a)'s grant of supplemental jurisdiction is unavailable where the parties in a complaint lack complete diversity.

Nor does § 1367 allow the complete-diversity requirement to be subverted by filing a case that meets the complete-diversity requirement, and thereafter adding non-diverse plaintiffs pursuant to the court's supplemental jurisdiction. Because the joinder of additional plaintiffs by amendment is a voluntary act of the original plaintiffs, each amended complaint offered by plaintiffs must satisfy the "original jurisdiction" threshold of § 1367(a) in order for supplemental jurisdiction to exist. A non-diverse amended complaint, just like a non-diverse initial complaint, fails to do so (because the addition of non-diverse plaintiffs destroys original jurisdiction over every claim), and thus will not support supplemental jurisdiction.

This natural reading of § 1367(a), which sensibly bars supplemental jurisdiction where a complaint lacks complete diversity but not where some parties' claims fall below the jurisdictional amount, is matched by an equally sensible natural reading of § 1367(b). On its face, that provision negates, for specified types of claims, the grant of supplemental jurisdiction, but only where the exercise of such jurisdiction "would be inconsistent with the jurisdictional requirements of section 1332." Read in one way, this qualifier to the exclusions of subsection (b) could mean that supplemental jurisdiction over the enumerated claims is unavailable except where all of the requirements of § 1332 are already satisfied as to those very claims. While petitioners would still prevail under this reading — because, being plaintiffs joined under Rule 20, their claims are not within any exception enumerated in subsection (b) — this reading of the final phrase of subsection (b) is problematic for two reasons.

First, it would give the phrase the wholly superfluous meaning that supplemental jurisdiction is unavailable except where the court already has jurisdiction over the claims under § 1332. There is obviously no point in qualifying the subsection (b) exceptions in such a manner, and the exact same result would have been achieved by simply omitting the last phrase of subsection (b) altogether.

Second, under this reading, subsection (b) would allow supplemental jurisdiction over the related claims of diverse plaintiffs joined under Rule 20 (which are not within subsection (b)'s exceptions), but not over totally diverse claims and claimants listed as exceptions in § 1367(b). There is little sense in denying supplemental jurisdiction over claims and claimants excepted in § 1367(b) which are completely diverse, while allowing such jurisdiction over the indistinguishable claims brought by plaintiffs joined under Rule 20.

In light of these difficulties (which are not implicated by the present case, but could arise in others), the phrase "when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332" is better construed to refer to situations where the exercise of supplemental jurisdiction would undermine the basis on which the court took jurisdiction of the case in the first place. Because original jurisdiction under § 1332 would be destroyed by — *i.e.*, is "inconsistent with" — the presence in the complaint of non-diverse parties, but not by the presence of diverse parties with claims that do not meet the jurisdictional amount, this language is best read to foreclose jurisdiction over the enumerated claims where, and only where, those claims are asserted by or against non-diverse parties.

So construed, the supplemental-jurisdiction statute is generally consistent with the common-law rules of pendent and ancillary jurisdiction, *see supra* pp. 5-8, and strikes a coherent balance between concerns for efficiency and concerns that supplemental jurisdiction not be used to bring cases into federal court which are incompatible with the complete-diversity rationale on which a case gets to federal court in the first place. In a diversity case, where claims arising from the same case or controversy are consistent with the requirement of total diversity, they may be pursued in the same proceeding under § 1367, even if they fall below the jurisdictional amount. Where, on the other hand, pursuit of any of the plaintiffs' claims enumerated in subsection (b)'s exception provisions would be inconsistent with the total-diversity prerequisite to jurisdiction over the original case under § 1332, supplemental jurisdiction is denied. Thus read, petitioners' claims in this case are treated no differently than identical claims of diverse plaintiffs, whether they are joined under Rule 19 or Rule 24, or are original to the case and are proceeding against diverse defendants joined under Rules 14, 19, 20 or 24.

There is no credible reading of the words of § 1367 leading to the conclusion that supplemental jurisdiction is inapplicable to the claims of Beatriz's family members on the facts of this case. All judicial efforts reaching a contrary result on similar facts have focused on § 1367(a)'s prerequisite of a case within the "original jurisdiction" of the district court, and have concluded inexplicably that no diversity jurisdiction exists, even in the presence of completely diverse parties and the claim of one plaintiff that meets the amount-in-controversy, where the claims of any other plaintiffs fall below the jurisdictional amount. Plainly original jurisdiction does exist in that circumstance and thus the supplemental jurisdiction is triggered.

No contrary conclusion is suggested by the facts that the general removal statute, 28 U.S.C. § 1441, requires a "civil action . . . of which the district courts of the United States have original jurisdiction," and has been construed to allow removal only where the entire case could have been brought in federal court. The identical phrases serve different purposes in § 1441 and § 1367. In § 1441, the entire case must be removable in order to protect the plaintiff's right to define the scope of his action. As this Court has made clear, claims within the supplemental jurisdiction authorized by § 1367 count as part of the "original jurisdiction" for purposes of § 1441. That obviously cannot be true in § 1367, where the phrase "original jurisdiction" is used differently, to denote the predicate for, not the result of, the exercise of supplemental jurisdiction.

At the end of the day, the argument for denying supplemental jurisdiction over petitioners' claims rests primarily on a sense that such a result may be inconsistent with legislative intent as expressed in fragments of legislative history. Petitioners submit, given the clarity of the statutory language supporting their position, that any reliance on legislative history in this instance is both inappropriate and unpersuasive. The legislative history most often cited in this regard does not even bear upon the factual

context of Rule 20 joinder presented here. Moreover, the reference relied upon offers no analysis of the statutory language. Indeed, as reflected in subsequent commentary by persons who played an integral role in the drafting process, there is good reason to conclude that the legislative history relied upon was an after-the-fact effort to alter the interpretation that follows clearly from the plain words of the statute.

ARGUMENT

I. WHERE ONE PLAINTIFF PRESENTS STATE-LAW CLAIMS THAT SATISFY THE AMOUNT-IN-CONTROVERSY REQUIREMENT AND THE REQUIREMENT OF TOTAL DIVERSITY IS MET, § 1367 PLAINLY CONFERS SUPPLEMENTAL JURISDICTION OVER THE RELATED CLAIMS OF DIVERSE CO-PLAINTIFFS THAT DO NOT MEET THE JURISDICTIONAL AMOUNT

A. The Text Of § 1367 Embodies Clear Rules For The Application Of Supplemental Jurisdiction

The supplemental-jurisdiction analysis under § 1367 proceeds in three steps. First, the several affirmative requirements set out in subsection (a) must be satisfied. Then, in the case of diversity actions, the supplemental claims must not fall within any of the exceptions enumerated in subsection (b). Finally, in all cases, district courts may, as a matter of discretion, choose not to exercise supplemental jurisdiction under circumstances outlined in subsection (c).

1. Section 1367(a)'s Affirmative Grant Of Supplemental Jurisdiction Is Triggered When One Plaintiff Brings A Claim Within The District Court's Original Jurisdiction, Which, In A Diversity Case, Means His Claim Satisfies The Amount-In-Controversy Requirement And Arises In A Case Where The Parties Are Completely Diverse

Section 1367(a) provides:

> Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

The threshold requirement for the exercise of supplemental jurisdiction under subsection (a) is the existence of "any civil action of which the district courts have original jurisdiction." Such a "civil action" within the federal court's "original jurisdiction" exists if *at least one claim* in the case meets the jurisdictional requirements to maintain an action in federal court. Subsection (a) makes this clear by contrasting the "claims in the action within such original jurisdiction" with the "other claims" over which supplemental jurisdiction is exercised.

Were there any doubt, the Court reaffirmed this point in *City of Chicago v. International College of Surgeons*, 522 U.S. 156 (1997), where it observed that a reading of § 1367(a) requiring *all* claims to satisfy the jurisdictional requirements in order to constitute a "civil action of which the district courts have original jurisdiction" "would effectively read the supplemental jurisdiction statute out of

the books: The whole point of supplemental jurisdiction is to allow the district courts to exercise pendent jurisdiction over claims as to which original jurisdiction is lacking." *Id.* at 167.

When at least one claim in an action arises under federal law, it is readily apparent that the "original jurisdiction" requirement of subsection (a) has been met, since the requirements of § 1331 are satisfied as to that claim, whether or not other claims are also brought as to which no jurisdictional basis can be found.

In cases where jurisdiction is predicated on diversity, the "original jurisdiction" requirement of § 1367(a) takes on added complexity, due to the requirement of complete diversity, which this Court, in *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806), found to be implicit in the diversity-jurisdiction statute. That requirement means that claims between parties of diverse citizenship are only within the jurisdiction of the federal courts if the action is completely diverse, *i.e.*, if no parties from the same State are on opposite sides of the lawsuit.

As a result of the complete-diversity requirement, it is not sufficient to establish original jurisdiction under § 1332 that a plaintiff bring claims meeting the amount-in-controversy requirement against defendants with whom his citizenship is diverse. His claims must also be brought in a suit in which all plaintiffs are diverse from all defendants. *See, e.g.*, *Wisc. Dep't of Corrections v. Schacht*, 524 U.S. 381, 389 (1998) ("Where original jurisdiction rests upon Congress' statutory grant of 'diversity jurisdiction,' this Court has held that one claim against one nondiverse defendant destroys that original jurisdiction."); *Peninsular Iron Co. v. Stone*, 121 U.S. 631, 633 (1887) (dismissing all claims where diversity was incomplete); *Corp. of New Orleans v. Winter*, 14 U.S. (1

Wheat.) 91, 94-95 (1816) (same).[11] Accordingly, where pendent-party claims contained in a complaint (including an amended complaint, *see infra* note 15) involve non-diverse parties, there is no "original jurisdiction" over any claim and, hence, no basis under § 1367(a) for asserting supplemental jurisdiction over the pendent-party claims.

By contrast, where the parties are completely diverse and at least one claim (but not necessarily all claims) meets the jurisdictional-amount requirement (currently $75,000), there is a civil action "of which the district courts have original jurisdiction."[12] *See Zahn*, 414 U.S. at 295 (dismissing only "those litigants whose claims do not satisfy the jurisdictional amount," but allowing the others to proceed where diversity was complete). Under such circumstances, therefore, the threshold requirement for supplemental jurisdiction is satisfied, and the district court may assert jurisdiction over the pendent-party claims that are consistent with complete diversity, even though they fall below $75,000.

The only other affirmative requirement of subsection (a) is that supplemental claims be "so related to [the] claims . . . within [the] original jurisdiction that they form part of the same case or controversy under Article III" of the Constitution. 28 U.S.C. § 1367(a). This relatedness requirement is satisfied whenever the supplemental claim "derive[s] from a common nucleus of operative fact" with a

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[11] As a pragmatic matter, the Court has allowed the dismissal of dispensable non-diverse parties to *create* diversity jurisdiction over the remaining claims, *see Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 832-38 (1989), but this practice does not alter the fact that, in such circumstances, original jurisdiction was lacking in the suit as filed.

[12] In conducting the amount-in-controversy analysis, a claim can be treated as if it encompasses amounts in controversy in other claims by the same plaintiff. *See, e.g.*, Charles Alan Wright, *The Law of Federal Courts* 210 (5th ed. 1994).

claim that is within the original jurisdiction. *United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966); *Int'l College of Surgeons*, 522 U.S. at 165 (the *Gibbs* test "is all the statute requires to establish supplemental jurisdiction").

2. Section 1367(b)'s Denial Of Supplemental Jurisdiction Over Certain Defined Claims In A Diversity Case, Where The Addition Of Such Claims "Would Be Inconsistent With The Jurisdictional Requirements Of Section 1332," Means That Such Claims May Not Be Added To The Case If They Would Destroy Complete Diversity

Any grant of supplemental jurisdiction over additional parties applicable to diversity cases raises a concern about the subsequent joinder of parties whose very presence is inconsistent with the diversity rationale under which the case came to federal court in the first place. While the "original jurisdiction" requirement of subsection (a) prevents the joinder of a non-diverse pendent party in the complaint, *see supra* Part I(A)(1), that provision does not by its terms prevent the subsequent joinder of, and assertion of claims by or against, non-diverse third parties. Accordingly, subsection (b) sets forth certain exceptions in cases brought solely under the diversity jurisdiction. Specifically, it provides as follows:

> (b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional

requirements of section 1332.

Understanding the nature and breadth of the exceptions thus made applicable in diversity cases to the grant of supplemental jurisdiction in § 1367(a) is a two-step process. First, one must determine what it means for the exercise of supplemental jurisdiction over such additional claims to "be inconsistent with the jurisdictional requirements of section 1332." Second, one must understand the types of claims that are excepted from supplemental jurisdiction under § 1367(b), when that first condition is satisfied.

On the first point, there are two possible interpretations of this final clause of § 1367(b). On the one hand, it could mean that supplemental jurisdiction over the specified claims is available only where the district court already has independent diversity jurisdiction over those claims. But this would mean that supplemental jurisdiction over the claims listed in (b) is available only where it is unnecessary. If that were the intended meaning, the same result could have been achieved by omitting the final clause altogether, a reading that ought to be disfavored. *See Hibbs v. Winn*, 124 S. Ct. 2276, 2286 (2004) ("rule against superfluities"); *see also* 2A Norman J. Singer, *Statutes and Statutory Construction* § 46.06, at 181-186 (rev. 6th ed. 2000).

This reading also produces several inexplicable anomalies. Supplemental jurisdiction would be allowed over small, related claims of diverse plaintiffs joined under Rule 20, but not over such claims by diverse Rule 19 or Rule 24 plaintiffs, or by plaintiffs named in the complaint against diverse defendants added under Rules 14, 19, 20, or 24. No reason appears why Congress would have wished to limit in this extreme and arbitrary way the reach of supplemental jurisdiction over diverse claims and parties all dealing with the same case or controversy.

An alternative reading of the final clause of § 1367(b) avoids these problems. The phrase "inconsistent with the jurisdictional requirements of section 1332" can be read to

foreclose supplemental jurisdiction over the claims enumerated in (b) only where the assertion of such jurisdiction would be inconsistent with diversity jurisdiction in the sense that, had the additional parties been included in the complaint, they would have destroyed the original jurisdiction over *any* case. This would occur only where the supplemental claim would add a non-diverse party, and thus alter the line-up of plaintiffs and defendants in a manner inconsistent with complete diversity. *See supra* pp. 24-25; *Schacht*, 524 U.S. at 389. Under this interpretation the final clause is not wholly superfluous. It also reconciles the statute's clear allowance of claims by diverse Rule 20 plaintiffs on the facts of this case with its treatment of the claims excepted in § 1367(b), by making clear that the enumerated exceptions apply only when the inclusion of such claims would destroy complete diversity. *See infra* Part I(A)(4).

This meaning of the last clause of (b) is supported by its drafting history. An earlier proposed version of this clause expressly excepted the enumerated claims only "when exercising supplemental jurisdiction over such claims would be inconsistent with *the complete diversity requirement* of section 1332." *Hearing on H.R. 5381 and H.R. 3898 Before the Subcomm. on Courts, Intellectual Property, and the Administration of Justice of the House Comm. on the Judiciary*, 101st Cong., 2d Sess. 716, 717 (1990) (letter from Professor Thomas M. Mengler to Professor Thomas D. Rowe, Jr.) (emphasis added). Three of the primary drafters (including both the author and the recipient of the letter proposing the initial language of the clause) have subsequently stated that the language ultimately took its current form at least in part simply to avoid "lock[ing] in the

complete diversity requirement for alienage cases,"[13] rather than to extend its scope beyond the complete-diversity component of § 1332. Thomas D. Rowe, Jr. *et al.*, *A Coda on Supplemental Jurisdiction*, 40 Emory L.J. 993, 998-99 (1991).

3. Section 1367(b) Creates No Exceptions From The Supplemental Jurisdiction Relating To Claims By Defendants

It is noteworthy that § 1367(b) does not include in its list of exceptions any claims that may be brought by a defendant who is named in the original complaint. Thus, defendants named in a diversity action may invoke the full power of supplemental jurisdiction to pursue claims relating to the same case or controversy, as permitted by the Federal Rules, without regard to whether the claims meet the jurisdictional amount or total diversity requirements.

Thus, supplemental jurisdiction exists (where it is needed) to allow defendants to counterclaim against plaintiffs pursuant to Rule 13(a) and (b), to cross claim against co-parties as allowed under Rule 13(g), and to counterclaim or cross claim against additional parties as provided for under Rule 13(h) (without regard to diversity of citizenship), provided that the claims in issue are part of the same case or controversy, as required under § 1367(a). Similarly,

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[13] Courts traditionally have held that there is no complete diversity where both a plaintiff and defendant are aliens, even if a citizen of some state is also a party on one side or the other. *See, e.g., Eze v. Yellow Cab Co.*, 782 F.2d 1064, 1065 (D.C. Cir. 1986) (per curiam). Some courts had hinted that pendent jurisdiction could be used to ameliorate this rule. *See, e.g., Indus. Inv. Dev. Corp. v. Mitsui & Co.*, 671 F.2d 876, 880-81 n.2 (5th Cir. 1982), *vacated on other grounds*, 460 U.S. 1007 (1983). The drafters thus suggested that a reference in (b) to the requirements of § 1332 generally, without expressly mentioning complete diversity, might leave open whether such a practice is permitted.

defendants may implead third parties under Rule 14 and may join necessary parties under Rule 19, all without regard to total diversity or amount in controversy.[14] *See Caterpillar, Inc. v. Lewis*, 519 U.S. 61, 66 n.1 (1996) (noting the permissibility under § 1367 and Rule 14 of defendant in a diversity case impleading a third-party defendant who is not diverse with the plaintiff); *Kroger*, 437 U.S. at 373-77 (denying ancillary jurisdiction over plaintiff's claim against non-diverse third-party defendant, but raising no question about defendants' Rule 14 joinder of third-party defendant in the first place); *State Farm Fire & Cas. Co. v. Tashire*, 386 U.S. 523, 530 (1967) (permitting incomplete diversity in the interpleader context).

4. Section 1367(b) Forecloses Supplemental Jurisdiction Over Claims By Existing Plaintiffs Against Newly Added Defendants, Or By Newly Added Plaintiffs Against Any Defendants, Where The Resulting Line-Up Of Plaintiffs And Defendants Would Lack Complete Diversity

While there are no statutory exceptions to supplemental jurisdiction over claims by defendants, there are two lists of enumerated exceptions applicable to claims brought by plaintiffs.

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[14] However, where a defendant seeks to join an additional plaintiff as an indispensable party under Rule 19, perhaps to ensure that all claims against the defendant arising from one incident are litigated in a single proceeding, the existence of supplemental jurisdiction over claims by the new plaintiff against the defendant is governed by the language of § 1367(b) referencing claims of persons "to be joined as plaintiffs under Rule 19." *See infra* pp. 31-32. Such claims will be foreclosed if inconsistent with the complete-diversity requirement, and if that new plaintiff is really indispensable to the case, the case will be dismissed by the district court pursuant to Rule 19(b), without prejudice to the parties proceeding in a different forum.

Under the first list of 1367(b) exceptions, there can be no supplemental jurisdiction in a diversity action over claims by plaintiffs against persons made parties under Rules 14, 19, 20, or 24, where the exercise of such jurisdiction would be inconsistent with the jurisdictional requirements of § 1332. Thus, for example, where a defendant impleads a non-diverse third-party defendant under Rule 14 — which as set forth above he may do — a plaintiff is nonetheless foreclosed from pursuing claims against that newly joined third-party defendant because doing so would be inconsistent with the requirement of total diversity on which federal-court jurisdiction is predicated. In this respect, as construed by this Court, *Caterpillar*, 519 U.S. at 66 n.1, the statute incorporates the common-law rule set out in *Kroger*, 437 U.S. at 376-77.

At the same time, if a defendant impleads under Rule 14 a third-party defendant who is *diverse* to the plaintiff, the plaintiff is allowed to bring against him supplemental claims arising from the same case or controversy that do not meet the jurisdictional amount. This follows from the position advanced above, *see supra* pp. 28-29, that the last clause of § 1367(b) excludes only claims that would undermine the jurisdictional basis on which the court is able to entertain the case in the first place. Unlike claims against a non-diverse party, the pursuit of small claims against a diverse party is fully consistent with the court's continued jurisdiction over the original matter under § 1332.

The same result follows where a plaintiff seeks to bring claims against non-diverse defendants added to the case pursuant to Rules 19, 20, and 24. As set forth above, defendants are unrestricted under § 1367(b) in their ability to add parties — whether diverse or non-diverse — as allowed by Rules 19 and 20. Similarly, a new party may seek to intervene as a defendant under Rule 24(a) or (b) — whether or not he is diverse — again subject to the same case-or-controversy requirement of § 1367(a). But supplemental jurisdiction will be unavailable over claims by existing

plaintiffs against any of these parties added under Rules 19, 20, or 24 if those new parties are non-diverse, because such claims would be "inconsistent with the jurisdictional requirements of section 1332," as those words are used in § 1367(b). *Cf. Kroger*, 437 U.S. at 376 (unlike a defendant, a "plaintiff cannot complain if ancillary jurisdiction does not encompass all of his possible claims in a case such as this one, since it is he who has chosen the federal rather than the state forum and must thus accept its limitations").

The second list of exceptions in § 1367(b) provides that "claims by persons proposed to be joined as plaintiffs under Rule 19 . . . or seeking to intervene as plaintiffs under Rule 24" may not be brought under the supplemental jurisdiction when doing so "would be inconsistent with the jurisdictional requirements of section 1332." By this language, new plaintiffs who would be joined under Rule 19, or by intervention under Rule 24, are not allowed into the case to pursue claims against existing defendants if their presence would destroy complete diversity.[15]

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[15] It has been suggested in commentary that the language of § 1367(b), by omitting any exception for persons proposed to be joined as plaintiffs under Rule 20, may leave a "gaping hole" that would allow plaintiffs to easily and transparently defeat the complete-diversity requirement. Thomas D. Rowe Jr. *et al.*, *Compounding or Creating Confusion About Supplemental Jurisdiction? A Reply to Professor Freer*, 40 Emory L.J. 943, 961 n.91 (1991); Richard D. Freer, *Toward a Principled Statutory Approach to Supplemental Jurisdiction in Diversity of Citizenship Cases*, 74 Ind. L.J. 5, 6 (1998). The theory is that the omission of Rule 20 from the second set of subsection (b) exceptions might allow a group of plaintiffs to file an initial action naming only those among them who are totally diverse with the named defendants and then, once the court's original jurisdiction over that action is thus established, file an amended complaint joining the additional non-diverse plaintiffs pursuant to Rule 20 and under the supplemental jurisdiction.

While this issue need not be confronted in this case, petitioners submit

In sum, the grant of supplemental jurisdiction in § 1367(a) and (b) yields a consistent and purposeful meaning. Assuming a case that falls within the original jurisdiction of the district court, § 1367(a) confers a general grant of supplemental jurisdiction over other claims that constitute part of the same case or controversy, including such claims that involve joinder or intervention of additional parties.

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that the argument rests upon an incorrect premise. When a plaintiff voluntarily amends the complaint to add additional parties, that amended complaint must itself support original jurisdiction (and, consequently, supplemental jurisdiction over any additional claims). *See Grupo Dataflux v. Atlas Global Group, L.P.*, 124 S. Ct. 1920, 1926 & n.5 (2004) (indicating that post-filing changes in parties can affect subject-matter jurisdiction); *Am. Fiber & Finishing, Inc. v. Tyco Healthcare Group, LP*, 362 F.3d 136, 141 (1st Cir. 2004) ("When [plaintiff] amended its complaint to configure its suit [to name a non-diverse defendant], complete diversity was destroyed just as surely as if it had sued [the non-diverse party] in the first instance. . . . The extra step obfuscates, but does not alter, the jurisdictional calculus."); *Estate of Alvarez v. Donaldson Co.*, 213 F.3d 993, 995 (7th Cir. 2000) (holding that, in adding defendants in an amended complaint, plaintiffs are required "to establish diversity as part of an amended complaint just as they did for the original complaint" (internal quotation marks omitted)); *Hensgens v. Deere & Co.*, 833 F.2d 1179, 1180-81 (5th Cir. 1987) ("Generally, jurisdiction is determined at the time the suit is filed. . . . However, addition of a nondiverse party will defeat jurisdiction."); *Ingram v. CSX Transp., Inc.*, 146 F.3d 858, 861-62 (11th Cir. 1998) (same in context of removal).

This principle closes the "gaping hole." If a plaintiff amends the complaint to add a non-diverse party, the analysis under § 1367 would never reach subsection (b), because the failure of complete diversity in the amended complaint would preclude original jurisdiction over any claim in the action, and the supplemental-jurisdiction analysis would never get beyond the threshold requirement of subsection (a) that there be a "civil action of which the district courts have original jurisdiction." Accordingly, there is no need for an exception in subsection (b) addressing the voluntary joinder of a non-diverse plaintiff.

This grant of supplemental jurisdiction is limited by § 1367(b), in cases where original jurisdiction rests solely on diversity of citizenship, to prevent plaintiffs from bringing a case into federal court under the diversity jurisdiction in two steps, where no federal jurisdiction would have existed under § 1332 if all appropriate parties had been included at the outset. Thus, the plaintiffs may not bring claims against newly added defendants, and newly added plaintiffs may not bring claims against new or existing defendants, where the resulting line-up of plaintiffs and defendants is inconsistent with the complete diversity on which jurisdiction under § 1332 depends. At the same time, defendants named in the complaint, having been haled into federal court under the diversity jurisdiction, are not thus restricted in their ability to assert the full power of the supplemental jurisdiction, to reach matters within the same case or controversy, up to the limits of joinder of claims and parties allowed under Rules 13, 14, 19, and 20 of the Rules of Civil Procedure.[16]

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[16] Subsection (c) of § 1367 enumerates several categories of claims over which a district court may opt, as a matter of discretion, not to entertain under its supplemental jurisdiction. The purpose of subsection (c) is to "codif[y]" the scope of discretion afforded district courts in this area under the preexisting regime set out in *Gibbs*. *See* 383 U.S. at 726-27 (discussing discretionary power not to hear certain claims). Specifically, under subsection (c), a district court may decline to exercise supplemental jurisdiction over novel or complex state-law claims, claims that substantially predominate over the claims within the court's original jurisdiction, claims remaining after all claims within the original jurisdiction have been dismissed, and other claims raising "compelling" and "exceptional" considerations.

B. Under The Straightforward Reading Of § 1367, The District Court Had Supplemental Jurisdiction Over The Claims Of Beatriz's Family Members

Application of § 1367's provisions to this case is straightforward. This is a "civil action of which the district courts have original jurisdiction" for purposes of § 1367(a), because the complete-diversity requirement is satisfied, and the claim of the injured child, Beatriz, satisfies the $75,000 amount-in-controversy requirement. Based upon this "claim[] in the action within such original jurisdiction," subsection (a) authorizes "supplemental jurisdiction over all other claims that are so related to" it "that they form part of the same case or controversy under Article III of the United States Constitution." The claims of Beatriz's family members form part of the same case or controversy because they arise from the injury to Beatriz involving the tuna can — a single transaction or occurrence, one and the same "nucleus of operative fact." *Int'l College of Surgeons*, 522 U.S. at 164-65. Thus, the requirements of § 1367(a) for supplemental jurisdiction over the claims at issue are satisfied.

Because this is a "civil action of which the district courts have original jurisdiction founded solely on section 1332," 28 U.S.C. § 1367(b), the exceptions set out in subsection (b) must be evaluated. Those exceptions are facially inapplicable. The supplemental claims in this case are claims by parties joined as plaintiffs under Rule 20 against the defendant, and, most obviously, there is no exception in § 1367(b) to the grant of supplemental jurisdiction for claims brought by plaintiffs joined in that manner. *See supra* pp. 31-34. As importantly, § 1367 confers supplemental jurisdiction over the claims of Beatriz's family members because those parties and claims are fully compatible with the existence of complete diversity, and thus are not "inconsistent with the jurisdictional requirements of section 1332." Thus, even if the claims of Beatriz' family members

had fallen within one of the enumerated categories under subsection (b), which they do not, subsection (b) would still not have precluded the assertion of supplemental jurisdiction.[17]

II. ALTERNATIVE INTERPRETATIONS OF § 1367 DENYING SUPPLEMENTAL JURISDICTION ON THE FACTS OF THIS CASE CANNOT BE RECONCILED WITH THE WORDS OF THE STATUTE

Not only do the words of § 1367 have a clear and determinate meaning that confers supplemental jurisdiction over the related claims of completely diverse plaintiffs who fail the amount-in-controversy requirement (so long as at least one such plaintiff satisfies that requirement), but the text as written simply will not bear a contrary construction. This is borne out by consideration of the reasoning that has been relied upon in reaching a different result.

It is noteworthy, first, that the primary line of analysis that has been advanced in support of denying supplemental jurisdiction in a case like this one, has focused not on the exceptions provision, § 1367(b), but rather upon the affirmative grant of jurisdiction contained in § 1367(a). Indeed, to petitioners' knowledge, no reading of subsection (b) has been proposed that could conceivably bring a case such as this one within that subsection's exceptions.

The principal argument that has been advanced is that § 1367(a)'s requirement of a "civil action of which the district courts have original jurisdiction" is only satisfied, in

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[17] None of the grounds set forth in § 1367(c) for discretionary refusal to exercise supplemental jurisdiction applies, and Star-Kist has never argued that it would be within the discretion of the district court to decline jurisdiction on that basis.

a diversity case, where there is original jurisdiction over *every claim* in the case as filed. *See* Pet App. 16a; *Trimble v. Asarco, Inc.*, 232 F.3d 946, 962 (8th Cir. 2000); *Meritcare Inc. v. St. Paul Mercury Ins. Co.*, 166 F.3d 214, 219-21 (3d Cir. 1999); *Leonhardt v. W. Sugar Co.*, 160 F.3d 631, 640-41 (10th Cir. 1998). Under such a reading, the presence of any claim in the complaint lacking an independent basis for diversity jurisdiction, separate from § 1367, would preclude any exercise of supplemental jurisdiction because there would be no "civil action" in the "original [federal] jurisdiction," as required for the application of § 1367(a).

This reading of subsection (a) is untenable for a variety of reasons. First, it would render the entirety of § 1367 largely superfluous in diversity cases, because, with regard to claims in the plaintiff's complaint, it would authorize supplemental jurisdiction only where it is not needed (because there is already an independent basis of jurisdiction for each claim). Second, such a reading is incompatible with the reference later in subsection (a) to "*claims* in the action within such original jurisdiction," as distinct from "other claims" in the case over which supplemental jurisdiction is exercised. 28 U.S.C. § 1367(a) (emphasis added). Third, the reading cannot be squared with *International College of Surgeons*, which expressly held that subsection (a) may be satisfied where there is a single jurisdictionally sufficient claim in the action. *See* 522 U.S. at 167. "The whole point of supplemental jurisdiction is to allow the district courts to exercise pendent jurisdiction over claims as to which original jurisdiction is lacking." *Id.*

Beyond these problems, this strange notion of what constitutes a "civil action" within the "original jurisdiction" affords no basis to distinguish between diversity and federal-question cases. Logically, the inclusion in either type of case of claims with no independent basis for federal-court jurisdiction would foreclose "original jurisdiction" under this reasoning. Unless it distinguishes between those two types of cases, the statute, under this reading, would fail to

accomplish its most commonly acknowledged objective, the abrogation of *Finley*. Accordingly, the First Circuit below, and the other circuits to adopt this construction of the statute, have relied principally on a theory first proposed by Professor James E. Pfander in an attempt to "produce *different* approaches in federal question and diversity litigation," notwithstanding that the text of subsection (a) does not distinguish between federal-question and diversity cases. James E. Pfander, *The Simmering Debate Over Supplemental Jurisdiction*, 2002 U. Ill. L. Rev. 1209, 1223 (2002) (emphasis added); *see also* James E. Pfander, *Supplemental Jurisdiction and Section 1367: The Case For A Sympathetic Textualism*, 148 U. Pa. L. Rev. 109, 128 (1999); Pet. App. 17a-18a; *accord Meritcare, Inc.*, 166 F.3d at 220 ("The organization of Section 1367 makes it clear that a distinction is to be made between a narrow approach to diversity cases, as contrasted with a more expansive scope for other sources of jurisdiction, such as federal question litigation."); *Leonhardt*, 160 F.3d at 640.

These courts rest their proposed distinction between diversity and federal-question cases on two lines of authority. First, they correctly observe that this Court's cases have required that, in diversity cases, diversity must be complete for original jurisdiction to attach to *any* claim in the action. Pet. App. 18a (citing *Schacht* for the proposition that a failure of total diversity destroys original jurisdiction over the whole action). Petitioners, of course, agree with this principle, which explains why § 1367 does not abrogate the complete-diversity requirement. *See supra* pp. 24-25.

Second, the court below, among others, purports to find in the law a distinct prerequisite to the existence of "original jurisdiction" in a diversity case — that every plaintiff separately satisfy the amount-in-controversy requirement. The only support offered for this view is a facially irrelevant line of cases involving the rules of aggregation in the amount-in-controversy analysis. Pet. App. 18a-19a; *accord Leonhardt*, 160 F.3d at 640; Pfander, *supra*, 148 U. Pa. L.

Rev. at 130-31. Those rules allow the aggregation of amounts in different claims by a plaintiff, but not the aggregation of amounts between different plaintiffs. *See* Pet. App. 18a-19a.

These aggregation principles simply have no bearing on the question whether there is "original jurisdiction" over a "civil action" where, in a completely diverse case, the claims of one party meet the amount-in-controversy, while the claims of other plaintiffs do not. The fact that this Court's pre-§ 1367 jurisprudence "prohibits multiple plaintiffs from combining their claims to clear the amount-in-controversy bar," Pet. App. 18a, says nothing about the original jurisdiction over the valid claim of a plaintiff whose own claim is sufficient. On this — the relevant question for purposes of construing subsection (a) of § 1367 — neither the First Circuit nor the other courts that have adopted its reading have offered any adequate explanation. Nor have they addressed the fact that *Zahn* and other cases have routinely recognized the existence of original jurisdiction over such claims by retaining the jurisdictionally valid claims and requiring the dismissal only of the insufficient claims. There simply appears to be no support for concluding, based on the fact that the complete-diversity principle survived the enactment of § 1367, that every plaintiff must also separately satisfy the jurisdictional minimum in order for supplemental jurisdiction to become available under subsection (a).[18]

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[18] Professor Pfander is also incorrect in his assertion — which it appears no court has adopted — that his interpretation of the "original jurisdiction" requirement is supported by a purported distinction in the pre-*Finley* case law between the treatment of pendent-party jurisdiction in federal-question as contrasted with diversity cases. *See* Pfander, 148 U. Pa. L. Rev. at 129 n.79 ("It was broadly recognized that the pre-*Finley* federal-question doctrine of pendent jurisdiction did not apply to cases

In short, the First Circuit and the other courts that have agreed with its interpretation of § 1367 offer no basis whatever to suppose that "original jurisdiction" over a "civil action" is lacking in a case, like this one, where complete diversity is present and some plaintiffs but not others meet the amount-in-controversy requirement. Accordingly, there is no reason here to doubt that supplemental jurisdiction is triggered according to its terms, or that the related claims of Beatriz's family members are thus properly brought in federal court.

The First Circuit's analogy to 28 U.S.C. § 1441, the removal statute, offers no argument to the contrary. The First Circuit found that because "the Supreme Court has interpreted section 1441 to prohibit removal unless the entire action as it stands at the time of removal could have been filed in federal court in the first instance," the phrase "civil action of which the district courts have original jurisdiction," which appears in both § 1441 and § 1367, should be given a corresponding meaning in § 1367. Pet. App. 21a-22a. This argument proves too much, for if § 1367 really were read to allow supplemental jurisdiction only where all claims in a complaint are already within the federal court's jurisdiction, the statute would not, as intended, achieve the abrogation of *Finley*.

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based on diversity of citizenship."). To the contrary, after *Gibbs*, the lower courts routinely asserted pendent-party jurisdiction over claims outside the courts' original jurisdiction in *both* federal-question and diversity cases. *See supra* pp. 5-7 & notes 1-3 (citing cases); Fortune, *supra*, 34 U. Pitt. L. Rev. at 1 ("The courts have . . . generally approved 'pendenting parties' in diversity cases . . . ."). It is true that *Zahn* placed this practice in doubt as to diversity cases in 1973. But, just two years later, *Aldinger* raised similar doubts about the use of the doctrine in federal-question cases. *See supra* p. 8.

Comparison with the language of § 1441 does not call for such an absurd reading. Section 1441 has quite naturally been construed in a manner that makes the plaintiff the master of his complaint, *Holmes Group, Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 831 (2002); *Caterpillar Inc. v. Williams*, 482 U.S. 386, 398-99 (1987), so that a defendant who wishes to remove a case must take the case as the plaintiff has pled it. Therefore, any case which cannot go forward intact in federal court, but, for lack of federal-court jurisdiction, could only be pursued there in part, must be left in state court. No similar concern is relevant under § 1367, where the question is whether there is a "civil action" within the district court's "original jurisdiction" to which the grant of supplemental jurisdiction can be applied.

As importantly, this Court has made clear that, as used in § 1441, a "civil action" is within the "original jurisdiction" of the federal court — and thus is removable — when the district court would have original jurisdiction over some claim in the case, so long as the remaining claims in the case fall within the requirements for supplemental jurisdiction under § 1367. *Int'l College of Surgeons*, 522 U.S. at 165-66.

The concept of a "civil action" within the "original jurisdiction" of the district court is thus used in an entirely different way in § 1441 than it is in § 1367. In § 1441, it is the statutory prerequisite for removal of a state court case to federal court, and is deemed satisfied whenever the entirety of a case falls within the jurisdiction of the federal court, even if that conclusion rests in part on exercise of supplemental jurisdiction. In contrast, in § 1367, a "civil action" within the district court's "original jurisdiction" is the predicate for any exercise of supplemental jurisdiction, and thus cannot include, as under § 1441, jurisdiction over supplemental claims or parties. Obviously it is impossible to equate the usage of "original jurisdiction" in § 1367, where it is the essential prerequisite to any assertion of supplemental jurisdiction, with the usage in § 1441, where it can be

established by relying upon supplemental jurisdiction conferred under § 1367.

Given the clarity of the text of § 1367, the only alternative ground for denying supplemental jurisdiction in this case is to ignore the unambiguous language of the statute in favor of the presumed subjective intent of the Congress. Any such departure from the plain meaning of a statutory text must satisfy the demanding doctrine of scrivener's error, which is limited to circumstances where the enactment as written would lead to absurd results. *See, e.g., W. Va. Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 99-100 (1991) (refusing to "permit our perception of the 'policy' of [a] statute to overcome its 'plain language'"); *accord Lamie v. United States Trustee*, 124 S. Ct. 1023, 1033-34 (2004) (rejecting argument that statute should be judicially corrected as a scrivener's error because the statute could be defended as a matter of policy as written); *Clinton v. City of New York*, 524 U.S. 417, 454-55 (1998) (Scalia, J., concurring in part and dissenting in part) (noting that statute as written must be "bizarre"). Absent such extraordinary circumstances, "[i]f Congress enacted into law something different from what it intended, then it should amend the statute to conform to its intent." *Lamie*, 124 S. Ct. at 1034.

The doctrine of scrivener's error is wholly inapplicable here. Not only are the results produced by the statute as written not absurd, but they make good sense as a matter of policy, history and legislative intent, as shown in Parts III and IV below.

III. THE NATURAL READING OF § 1367 PROMOTES JUDICIAL ECONOMY WHILE PRESERVING THE RULE OF COMPLETE DIVERSITY

In the absence of supplemental jurisdiction, parties to a single constitutional case or controversy involving multiple claims, some of which are not independently within the original jurisdiction of the federal courts, would face two undesirable alternatives. If such parties wished to exercise

their statutory privilege of having their federally cognizable claims tried in federal court, they would have to incur the additional costs of litigating the nonfederal claims separately in state court. Alternatively, such parties would be able to enjoy the convenience and economy of trying all related claims together only if they chose to forego the federal forum entirely.

Motivated by these efficiency concerns, courts developed the common-law doctrines of pendent and ancillary jurisdiction to enable parties to try together in the same federal lawsuit all related claims, provided that the matter as a whole was properly within the original jurisdiction of the federal courts. *See* Matasar, *supra*, 17 U.C. Davis L. Rev. at 110-14; *Gibbs*, 383 U.S. at 726 (explaining that the "justification" for the doctrine of pendent jurisdiction "lies in considerations of judicial economy, convenience and fairness to litigants"). In codifying these doctrines in § 1367, Congress, too, recognized that supplemental jurisdiction enables courts and litigants "to deal economically—in single rather than multiple litigation—with related matters" in situations in which Congress has provided for original federal jurisdiction over at least a portion of the controversy. *See* H.R. Rep. No. 101-734, at 28 (1990), *reprinted in* 1990 U.S.C.C.A.N. 6860, 6874. Section 1367 furthers these goals through the broad grant of supplemental jurisdiction contained in subsection (a).

At the same time, the statutory scheme furthers a competing objective: preventing plaintiffs from using supplemental jurisdiction to circumvent the jurisdictional requirement of complete diversity. Cases that are admitted to federal court under the diversity jurisdiction are there not because of anything to do with the legal subject matter at issue, but only because of the alignment of parties as citizens of different states. With diversity of citizenship of the parties as the sole rationale for the court's jurisdiction, there is ample reason for concern that any grant of supplemental jurisdiction built upon § 1332 not be so broad as to stretch

the diversity jurisdiction beyond all recognition. The danger is that plaintiffs might combine the grant of jurisdiction under § 1332 with the supplemental jurisdiction under § 1367(a), to boot-strap into federal court controversies that lack diversity of citizenship between the disputing parties in any substantial sense. *See ALI Tentative Draft No. 2* at xvii ("The key lies in identifying just what sorts of supplemental claims must be excluded from supplemental jurisdiction in order to preserve the effect of the rule of complete diversity.").

This problem is illustrated in *Kroger*. In that case, a citizen of Iowa had filed suit against a citizen of Nebraska, who in turn had, pursuant to Rule 14(a) of the Federal Rules of Civil Procedure, impleaded as a third-party defendant another citizen of Iowa. The Iowa plaintiff then amended her complaint to assert claims against the Iowa third-party defendant. This Court held that the district court lacked jurisdiction over this supplemental claim, expressing the concern that permitting jurisdiction under such circumstances would permit parties to circumvent the rule of complete diversity:

> [I]t is clear that the [plaintiff] could not originally have brought suit in federal court naming [the defendant and the third-party defendant] as codefendants, since citizens of Iowa would have been on both sides of the litigation. Yet the identical lawsuit resulted when [the plaintiff] amended her complaint. Complete diversity was destroyed just as surely as if she had sued [the third-party defendant] initially.

Kroger, 437 U.S. at 374.

Indeed, concerns about circumvention of the complete-diversity requirement have long influenced the development of the doctrines of pendent and ancillary jurisdiction. Prior to *Gibbs*, the doctrines developed in such a way as to prohibit the joinder of non-diverse parties where doing so threatened to undermine the rule of complete diversity. *See*

Note, *Diversity Requirements in Multi-Party Litigation*, 58 Colum. L. Rev. 548 (1958) (surveying pre-*Gibbs* case law and concluding that the doctrine of ancillary jurisdiction is and ought to be applied in diversity actions in such a way as to prevent plaintiffs from circumventing the complete-diversity requirement). After the lower courts became more aggressive in their assertions of supplemental jurisdiction after *Gibbs*, commentators warned against the potential evisceration of the complete-diversity rule. *See* Fortune, *supra*, 34 U. Pitt. L. Rev. at 18; Bratton, *supra*, 11 San Diego L. Rev. at 313.

Accordingly, at the time Congress began considering the legislation that would become § 1367, it was widely accepted even by many supporters of a broad supplemental jurisdiction that concerns for judicial economy should yield to rules that prevented plaintiff evasion of the complete-diversity requirement. This concern was noted by the subcommittee of the Federal Courts Study Committee that initially proposed a supplemental-jurisdiction statute, *see Federal Courts Study Subcommittee Report*, *supra*, at 563-67, and by others involved in the process of drafting § 1367, *see supra* note 6; Mengler, *supra*, 1990 BYU L. Rev. at 286; H.R. Rep. No. 101-734, at 29 (1990) (noting goal of preventing plaintiffs from "evad[ing]" the requirement of complete diversity).

Notwithstanding the substantial concern and attention devoted to preserving the complete-diversity requirement before and during the formulation of the current language of § 1367, much of the resistance to the natural reading of the statute has resulted from a misplaced concern that a straightforward reading of the language would abrogate *Strawbridge*. *See, e.g.*, Pet. App. 27a-30a; Pfander, *supra*, 148 U. Pa. L. Rev. at 125. However, as shown in Part I(A) above, this concern is fundamentally unfounded, because § 1367 distinguishes sharply between cases in which total diversity is lacking, and cases where some but not all claims fall short of the amount in controversy. *See supra* pp. 24-25.

Further, in a case such as this one, where total diversity of citizenship exists and at least one plaintiff is asserting claims that satisfy the statutory amount-in-controversy requirement, the efficiency rationale for supplemental jurisdiction is presented in its starkest form. Where the facts of a single case or controversy are to be litigated in federal court because jurisdiction on that basis is undeniable, there is no reason why the smaller claims of other diverse parties, arising from the same operative facts, should not be resolved in the same proceeding.[19] The result of the natural reading of § 1367 is thus fully consistent with the twin objectives of enhancing efficiency and respecting the integrity of the complete-diversity limitations of § 1332.

IV. THE LEGISLATIVE HISTORY PROVIDES NO JUSTIFICATION FOR REWRITING § 1367 IN THE MANNER ADVOCATED BY RESPONDENT AND THE COURT BELOW

As explained above, the text of § 1367 is unambiguous with respect to the question presented in this case. Given the absence of ambiguity, there is no warrant to consider legislative history. *See, e.g., Bedroc Ltd. v. United States*, 124 S. Ct. 1587, 1595 n.8 (2004) (reaffirming "our longstanding precedents that permit resort to legislative history only when necessary to interpret ambiguous statutory text"). Therefore, the First Circuit's reliance upon the

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[19] The American Law Institute, which has drafted proposed revisions to clarify the scope of § 1367, agrees that "it is sound jurisdictional policy to permit a [jurisdictionally sufficient] claim in a diversity action to support supplemental jurisdiction over claims by additional diverse parties. To provide otherwise would be to encourage duplicative litigation, since the withdrawal of supplemental jurisdiction over related claims of lesser amount is unlikely to dissuade a party litigating a claim worth more than $75,000 from proceeding in federal court after the lesser claim of a coplaintiff is dismissed." *ALI Tentative Draft No. 2* at 68.

legislative history in its departure from the plain meaning of § 1367 (Pet. App. 30a-32a) was erroneous.

In any event, the legislative history does not support the First Circuit's interpretation of the statute. As already noted, the principal goal behind Congress's enactment of § 1367 was to authorize the exercise of pendent and ancillary jurisdiction except where doing so would be inconsistent with, or would enable plaintiffs to circumvent, the rule of complete diversity. *See supra* pp. 43-46; *see also* H.R. Rep. No. 101-734, at 29 n.16 ("The net effect of subsection (b) is to implement the principal rationale of [*Kroger*]."). A reading of the statute that permits pendent-party jurisdiction over the claims of *diverse* co-plaintiffs furthers that legislative goal. *See* Charles Alan Wright & Mary Kay Kane, *Law of Federal Courts* 217 & n.33 (6th ed. 2002) ("[T]he legislative history of [§ 1367] shows that the purpose of § 1367(b) was to preserve the rule of complete diversity, but there is nothing to indicate that Congress cared about preserving the existing rules on jurisdictional amount.").

Nor should the Court conclude otherwise simply because of a sentence in the House Report stating that § 1367 "is not intended to affect the jurisdictional requirements of 28 U.S.C. § 1332 in diversity-only class actions, as those requirements were interpreted prior to" *Finley*. H.R. Rep. No. 101-734, at 28-29 & n.17 (1990), *reprinted in* 1990 U.S.C.C.A.N. 6860, 6874-75 & n.17 (citing *Zahn* and *Ben Hur*). For a number of reasons, this lone sentence does not support respondent's reading of the statute.

First, the sentence refers to class actions, not to the joinder of additional named plaintiffs under Rule 20. By its terms, therefore, the statement has no direct application to the issue in this case. Second, the sentence lacks any analysis of the text and offers no coherent explanation of how the putative congressional intent relates to the language of the section.

Third, and most importantly, an undue focus on this unexplained and inexplicable (in view of the statute's clear

language) footnote ignores the basic history of the statute's development, of which a substantial record does exist. That record reveals that the Federal Court Study Committee's efforts aimed at codifying pendent and ancillary jurisdiction proceeded in tandem with a more radical proposal to abolish diversity jurisdiction, which the Committee regarded as substantially responsible for the congestion of the federal courts. *Report of the Federal Courts Study Committee*, *supra*, at 38-39 (1990). With its attention focused on the need for efficiency in the utilization of federal judicial resources, and aware that its abolition proposal would likely not prevail, in codifying the jurisdictional basis for pendent and ancillary jurisdiction, the Committee gave some attention to the functioning of supplemental jurisdiction in the diversity as well as the federal-question context. Recognizing the consequences of this Court's *Finley* decision in often confining the federal courts to piecemeal and inefficient litigation of matters coming before them, the Committee urged adoption of broad supplemental jurisdiction, consistent with the *Gibbs* "common nucleus of operative fact" standard. *Id.* at 47.

It is thus not surprising that the report of the subcommittee of the Federal Courts Study Committee that recommended § 1367 to Congress concluded, contrary to the House Report, that the language contained in a proposed draft of the statute "would overrule the Supreme Court's decision in *Zahn*." *Federal Courts Study Subcommittee Report*, *supra*, at 561 n.33. Indeed, the subcommittee endorsed that result. *See id.* ("From a policy standpoint, [*Zahn*] makes little sense, and we therefore recommend that Congress overrule it.").[20] While the language of the proposal was subsequently

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[20] The text of the draft proposal is set forth in the subcommittee report. *See id.* at 567-68.

changed in some respects, the relevant final language of § 1367 is "strikingly similar" to the language on which the subcommittee opined, *Gibson v. Chrysler Corp.*, 261 F.3d 927, 937 (9th Cir. 2001), and nothing therein was revised in a manner that would effectuate the preservation of *Clark* or *Zahn*. The single footnote that has been focused upon as showing a purpose to preserve *Zahn* explains neither the why nor the how of this supposed sudden reversal of direction.

One explanation has been provided, though, by the commentary of law professors who played a role in drafting § 1367 and have acknowledged that the reference to *Zahn* was belatedly inserted into the House Report in an attempt to *modify* the enacted text rather than to explicate it. *See* Thomas D. Rowe, Jr. *et al.*, *Compounding or Creating Confusion about Supplemental Jurisdiction? A Reply to Professor Freer*, 40 Emory L.J. 943, 960 n.90 (1991) (explaining that the insertion of the sentence was an "attempt to correct" an "oversight" in the text of the statute); Thomas D. Rowe, Jr. *et al.*, *A Coda on Supplemental Jurisdiction*, 40 Emory L.J. 993, 1005-06 (1991) (noting that "[w]e frankly described the legislative history coverage as second-best to more explicit treatment in the statute," but nonetheless expressing "our expectation" that courts will follow the legislative history).[21] Accordingly, "the legitimacy of the so-called legislative history is highly suspect here because three of its drafters essentially admit that it was [a] *post-hoc* effort to repair what they (as opposed to Congress) thought to be an oversight." *Payne v. Goodyear Tire & Rubber Co.*, 229 F. Supp. 2d 43, 51 (D. Mass. 2002); *accord Rosmer v. Pfizer*

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[21] The professors noted that this use of legislative history to "correct" the language of a statute "creates the delicious possibility that despite Justice Scalia's opposition to the use of legislative history, he will have to look to the history or conclude that section 1367 has wiped *Zahn* off the books." 40 Emory L.J. at 960 n.90.

Inc., 263 F.3d 110, 121 (4th Cir. 2001) ("In reading the clear language of the statute in the same way that the esteemed drafters of § 1367(a) do, we reach the conclusion they concede to be inescapable.").[22]

CONCLUSION

For the reasons set forth above, the decision of the court below should be reversed.

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[22] Moreover, as the Fourth Circuit has observed, the inclusion of both *Zahn* and *Ben-Hur* in the same legislative history footnote, as cases that should be viewed as unaffected by § 1367, is internally inconsistent, since the essential textual rationalization for preserving *Zahn* involves reading Rule 23 into the enumerated exceptions in § 1367(b), which would simultaneously reverse *Ben-Hur*:

> In the same footnote where the House Committee Report approvingly cited *Zahn*, it also cited *Supreme Tribe of Ben-Hur v. Cauble*, 255 U.S. 356, 41 S.Ct. 383, 65 L.Ed. 673 (1921). In *Ben-Hur*, the Supreme Court held that in class actions, only the named plaintiffs must have complete diversity. In other words, absent class members may come from the same state as the opposing party so long as all named plaintiffs are diverse. Adding Rule 23 to § 1367(b)'s exceptions would have the effect of reversing the result in *Ben-Hur* even as it sustains the result in *Zahn*. Indeed, the House Report's admonition that both *Zahn* and *Ben-Hur* survive the enactment of § 1367 is simply impossible to square with the plain text of the statute.

Rosmer, 263 F.3d at 117 n.4.

Respectfully submitted,

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IN THE

Supreme Court of the United States

MARIA DEL ROSARIO ORTEGA, ET AL.,

Petitioners,

v.

STAR-KIST FOODS, INC.

Respondent.

On Writ of Certiorari
to the United States Court of Appeals
for the First Circuit

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QUESTION PRESENTED

Whether the supplemental jurisdiction statute, 28 U.S.C. § 1367, altered the long-established requirements for original jurisdiction in a diversity action under 28 U.S.C. § 1332, including the requirement that each plaintiff must satisfy the $75,000 "matter-in-controversy" requirement.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The parties to the proceeding are: Petitioners Maria Del Rosario Ortega, Sergio Blanco, and Patrizia Blanco-Ortega; Respondent Star-Kist Foods, Inc.; Plaintiff Beatriz-Blanco-Ortega; and Defendants "Insurance Companies XYZ."

At the time this action was commenced in the district court, Star-Kist Foods, Inc., was a wholly-owned subsidiary of the H.J. Heinz Company. During the course of this litigation, Star-Kist Foods, Inc., became a division of Del Monte Corporation, d/b/a Del Monte Foods. Del Monte Foods is a wholly-owned subsidiary of Del Monte Foods Company, a publicly-traded company.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-45a) is reported at 370 F.3d 124. The opinion of the district court (Pet. App. 46a-64a) is reported at 213 F. Supp. 2d 84. An earlier opinion of the district court (J.A. 17-31) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 2, 2004. Pet. App. 1a. The petition for a writ of certiorari was filed on July 16, 2004, and was granted on October 16, 2004. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

It appears, however, that original jurisdiction under 28 U.S.C. § 1332 may be lacking in this case, because the plaintiffs have failed to establish the citizenship of each defendant. The parties' prior submissions to this Court state that Respondent Star-Kist Foods, Inc., is the sole defendant in this case. *See* Pet. ii; Br. in Opp. i; Pet. Br. ii. In fact, plaintiffs named "Insurance Companies XYZ" as additional defendants in both their original and amended complaints. *See* J.A. 10, 32. The complaints allege:

> "Codefendants XYZ Insurance Companies are the fictitious names of the insurance companies, which had issued and maintained in full force and effect an insurance policy on behalf of Starkist under whose terms and conditions they are jointly and severally liable with its insured for the facts and damages herein, and assumes the citizenship of their insured. Once the identities of said insurance companies are known, the plaintiffs will request leave to amend the complaint to incorporate their correct names." J.A. 11-12 (Complaint ¶ 12); *id.* 33 (Amended Complaint ¶ 10).

Petitioners have not amended their complaint to incorporate the correct names of the insurance companies.[1]

"[T]he existence of diversity jurisdiction cannot be determined without knowledge of every defendant's place of citizenship," and therefore "'John Doe' defendants are not permitted in federal diversity suits." *Howell v. Tribune Entm't Co.*, 106 F.3d 215, 218 (7th Cir. 1997); *see also* 14 Charles Alan Wright, *et al.*, FEDERAL PRACTICE AND PROCEDURE § 3642 (1998 & 2004 Supp.) ("[T]he diverse citizenship of the fictitious defendants must be established by the plaintiff."). Because Respondent's insurers are not merely nominal parties, their citizenship must be established by Petitioners. *See Howell*, 106 F.3d at 218.[2]

Although this issue was not raised in the courts below or at the certiorari stage, this Court will consider jurisdictional issues, and raise them *sua sponte* when necessary, even if they were not raised earlier in the litigation. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 93 (1998) (citation omitted).[3]

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[1] The caption of the case in the district court indicates that there are multiple defendants. *See* Pet. App. 46a, 65a; J.A. 32. Although the caption of the court of appeals' opinion identifies only Star-Kist, Inc., as a defendant, the court's opinion states that Petitioners initially sued Star-Kist Foods, Star-Kist Caribe, Inc., "and their unnamed insurers," and subsequently "re-filed their complaint . . . this time only naming Star-Kist Foods, Inc. and its unnamed insurers as defendants." Pet. App. 2a.

[2] Congress amended 28 U.S.C. § 1441(a) in 1988 to provide that "[f]or purposes of removal the citizenship of defendants sued under fictitious names shall be disregarded." Although the issue is not free from doubt, *compare Howell*, 106 F.3d at 218 *with Macheras v. Center Art Galleries–Hawaii, Inc.*, 776 F. Supp. 1436, 1438 (D. Haw. 1991), the better view is that this amendment applies only to removed cases. *See* 14 Charles Alan Wright, *supra*, § 3642, at 204-05.

[3] In some circumstances, an appellate court may grant "a motion to dismiss a dispensable party whose presence spoils statutory diversity jurisdiction." *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 827 (continued...)

STATUTES AND RULES INVOLVED

Relevant portions of §§ 1331, 1332, 1367, and 1441 of Title 28, United States Code, and Rules 14, 19, 20, and 24 of the Federal Rules of Civil Procedure are reprinted in the appendix to this brief.

STATEMENT

1. Diversity Jurisdiction. This case requires the Court to consider the relationship between 28 U.S.C. § 1332, which confers original jurisdiction on federal district courts in civil diversity actions, and 28 U.S.C. § 1367, which confers supplemental jurisdiction of certain claims when the district court has original jurisdiction in a civil action. Section 1332 provides that "[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between . . . citizens of different States." 28 U.S.C. § 1332.[4] This Court's decisions have

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(1989). The Court has "emphasize[d]," however, that this power "should be exercised sparingly," *id.* at 837, and stated that "ordinarily, district courts are better positioned to make such judgments." *Caterpillar, Inc. v. Lewis*, 519 U.S. 61, 76 (1996). In *Newman-Green*, a final judgment on the merits had been entered following "years of discovery." *Id.* at 828. Here, in contrast, the litigation has not progressed beyond threshold jurisdictional issues. Moreover, 28 U.S.C. § 1367(b) appears to preclude the exercise of supplemental jurisdiction where, as here, multiple defendants are joined under Fed. R. Civ. P. 20. *See* Richard H. Fallon, Jr., *et al.*, THE FEDERAL COURTS AND THE FEDERAL SYSTEM 1491 & n.3 (5th ed. 2003) (citation omitted).

[4] More specifically, the second requirement is met if the action is between "citizens of different States," "citizens of a State and citizens or subjects of a foreign state," "citizens of different States and in which citizens or subjects of a foreign state are additional parties," or "a foreign state . . . as plaintiff and citizens of a State or of different States." 28 U.S.C. § 1332(a)(1)-(4).

determined the meaning of both the "matter-in-controversy" and the "diversity" requirements of § 1332.

a. "Complete Diversity." "In *Strawbridge v. Curtiss*, [7 U.S.] (3 Cranch) 267 (1806), this Court held that the diversity of citizenship statute required 'complete diversity': where co-citizens appeared on both sides of a dispute, jurisdiction was lost." *State Farm Fire & Cas. Co. v. Tashire*, 386 U.S. 523, 530-31 (1967). In *Tashire*, the Court held that "minimal" diversity is sufficient to bring a "Case[]" within the "judicial Power of the United States" under Article III of the Constitution. *See id.*; U.S. CONST. art. III, §§ 1, 2. Thus, the "'complete diversity' interpretation of the general-diversity provision is a matter of statutory construction." *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 n.3 (1996). By "repeatedly re-enact[ing] or amend[ing] the statute conferring diversity jurisdiction, leaving intact this rule of complete diversity," Congress has "clearly demonstrated a congressional mandate that diversity jurisdiction is not to be available when any plaintiff is a citizen of the same State as any defendant." *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 373-74 (1978).[5]

b. "Matter in Controversy." When Congress first conferred diversity jurisdiction on the federal courts in the Judiciary Act of 1789, it limited the grant of jurisdiction to cases in which the matter in controversy exceeded $500. *See* 1 Stat 79 (1789). Congress has maintained the "matter-in-controversy" requirement ever since, increasing it to $2,000 in 1887, 24 Stat. 552; $3,000 in 1911, 36 Stat. 1087, 1091;

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[5] In the class action context, the Court has held that the complete diversity requirement is satisfied if each representative plaintiff is a citizen of a different State from each defendant, regardless of the citizenship of unnamed class members. *See Supreme Tribe of Ben-Hur v. Cauble*, 255 U.S. 356, 366-67 (1921).

$10,000 in 1958, 72 Stat. 415; $50,000 in 1988, 102 Stat. 4646; and $75,000 in 1996, 110 Stat. 3847, 3850.[6]

It has long been settled that, while a single plaintiff may aggregate his or her own claims in order to satisfy the matter-in-controversy requirement, separate claims of different plaintiffs cannot be aggregated. *See, e.g., Troy Bank v. G.A. Whitehead & Co.*, 222 U.S. 39, 40 (1911) ("When two or more plaintiffs, having separate and distinct demands, unite for convenience and economy in a single unit, it is essential that the demand of each be of the requisite jurisdictional amount."). This rule is "firmly rooted" in decisions of this Court "dating from 1832," *Zahn v. Int'l Paper Co.*, 414 U.S. 291, 294 (1973) (citing, *inter alia*, *Oliver v. Alexander*, 6 Pet. (31 U.S.) 143, 145 (1832)). And it has been reaffirmed many times. *See, e.g., Shields v. Thomas*, 58 U.S. (17 How.) 3 (1854); *Pinel v. Pinel*, 240 U.S. 594, 596 (1916); *Zahn*, 414 U.S. at 294 n.3 (rule confirmed by "innumerable cases").

In *Clark v. Paul Gray, Inc.*, 306 U.S. 583 (1939), the Court reaffirmed the rule following the adoption of the Federal Rules of Civil Procedure.[7] Only a single plaintiff in *Clark* satisfied the matter-in-controversy requirement. *Id.* at 589. The Court held "that where each of several plaintiffs is bound to establish the jurisdictional amount with respect to his own claim, the suit should be dismissed as to those who fail to show that the requisite amount is involved." *Id.* at 590.

In *Snyder v. Harris*, 394 U.S. 332 (1969), the Court reaffirmed the non-aggregation principle in the context of

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[6] Prior to 1980, Congress also imposed a matter-in-controversy requirement in federal question cases. *See* Pub. L. No. 96-486, § 2, 94 Stat. 2369 (1980) (eliminating matter-in-controversy requirement from 28 U.S.C. § 1331).

[7] *Clark* was a federal question case, decided before Congress abolished the matter-in-controversy requirement for such cases. *See* note 6 *supra*.

class actions. The Court said that the principle rests "upon this Court's interpretation of the statutory phrase 'matter in controversy.'" *Id.* at 336. "[B]eginning with the first Judiciary Act in 1789," Congress repeatedly has increased the "jurisdictional amount requirement" without altering the "matter in controversy" language. *Id.* at 338-39. The Court concluded that "[t]o overrule the aggregation doctrine at this late date would run counter to the congressional purpose in steadily increasing through the years the jurisdictional amount requirement," which "was to check, to some degree, the rising caseload of the federal courts, especially with regard to the federal courts' diversity of citizenship jurisdiction." *Id.* at 339-40. "The policy of the statute" – including "[d]ue regard for the rightful independence of state governments" – "calls for its strict construction." *Id.*, quoting *Healy v. Ratta*, 292 U.S. 263, 270 (1934).

Zahn was also a class action. Unlike *Snyder*, some but not all class members satisfied the matter-in-controversy requirement. Despite this difference, the Court had "no doubt that the rationale of [*Snyder*] controls," 414 U.S. at 300, and therefore held that "[e]ach plaintiff in a Rule 23(b)(3) class action must satisfy the jurisdictional amount." *Id.* at 301. The Court added that "the application of the jurisdictional amount requirement" is "so plainly etched in the federal courts . . . that had there been any thought of departing from these decisions . . . some express statement of that intention would surely have appeared, either in the amendments themselves or in the official commentaries." *Id.* at 302.

2. Pendent and Ancillary Jurisdiction. The supplemental jurisdiction statute, 28 U.S.C. § 1367, "codifie[s]" and "combines the doctrines of pendent and ancillary jurisdiction under a common heading" of "supplemental jurisdiction." *City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 165 (1997). Consequently, this

Court's decisions on pendent and ancillary jurisdiction illuminate the meaning of § 1367.

a. "Pendent Claim" Jurisdiction. In *United Mine Workers of America v. Gibbs*, 383 U.S. 715 (1966), a plaintiff sought to pursue claims against a nondiverse defendant under both federal law and state law. The Court concluded that "[p]endent jurisdiction, in the sense of judicial *power*, exists whenever there is a claim 'arising under the Constitution, the Laws of the United States, and Treaties made . . . under their [a]uthority . . .,' and the relationship between that claim and the state claim permits the conclusion that the entire action before the court comprises but one constitutional 'case.'" *Id.* at 725 (quoting U.S. CONST. art. III, § 2; emphasis in original). The Court held that when "[t]he state and federal claims . . . derive from a common nucleus of operative fact," and "are such that [the plaintiff] would ordinarily be expected to try them all in one judicial proceeding, then . . . there is *power* in the federal courts to hear the whole." *Id.* (emphasis in original). *See also id.* at 726-27.[8]

b. "Pendent Party" Jurisdiction. In *Aldinger v. Howard*, 427 U.S. 1 (1976), the Court considered "whether the doctrine of pendent jurisdiction extends to confer jurisdiction over a party as to whom no independent basis of federal jurisdiction exists." 427 U.S. at 2-3. The plaintiff in

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[8] The "lineal ancestor" of *Gibbs* is *Osborn v. Bank of United States*, 22 U.S. (9 Wheat.) 738 (1824). *Aldinger v. Howard*, 427 U.S. 1, 13 (1976). In *Osborn*, Chief Justice Marshall's opinion for the Court held that "when a question to which the judicial power of the Union is extended by the constitution, forms an ingredient of the original cause, it is in the power of congress to give the Circuit Courts jurisdiction of that cause, although other questions of fact or of law may be involved in it." 22 U.S. at 823. *See Aldinger*, 427 U.S. at 7 (*Osborn* "rejected" the contention that "the presence in a federal lawsuit of questions which were not dependent on the construction of a law of the United States prevented the federal court from exercising Art. III jurisdiction.").

Aldinger brought federal constitutional claims against county officials under 42 U.S.C. § 1983, and also sought to pursue state-law claims against the county. *See id.* at 5. The Court concluded that "[t]he situation with respect to the joining of a new party" is "different from the situation facing the Court in *Gibbs*." *Id.* at 14. "[I]t is one thing to authorize two parties, already present in federal court by virtue of a case over which the court has jurisdiction, to litigate in addition to their federal claim a state-law claim." *Id.* In contrast, "the addition of a completely new party would run counter to the well-established principle that federal courts, as opposed to state trial courts of general jurisdiction, are courts of limited jurisdiction marked out by Congress." *Id.* at 15. The Court quoted Judge Sobeloff's observation that efficiency "is not the only consideration a federal court should take into account in assessing the presence or absence of jurisdiction . . . [e]specially . . . where, as here, the efficiency plaintiff seeks so avidly is available without question in the state courts." *Id.* (internal quotation and citation omitted).

Although the Court declined to "lay down any sweeping pronouncement" concerning pendent-party jurisdiction, it made two general observations. *Id.* at 18. *First*, "[i]f the new party sought to be joined is not otherwise subject to federal jurisdiction, there is a more serious obstacle to the exercise of pendent jurisdiction than if parties already before the court are required to litigate a state law claim." *Id.* *Second*, "[b]efore it can be concluded that such jurisdiction exists, a federal court must satisfy itself not only that Art. III permits it, but that Congress in the statutes conferring jurisdiction has not expressly or by implication negated its existence." *Id.*

c. Ancillary Jurisdiction. In *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365 (1978), the plaintiff commenced a diversity action, the defendant filed a third-party complaint against Owen Equipment Co. pursuant to Fed. R. Civ. P. 14(a), and the plaintiff then amended her

complaint to assert a claim against Owen Equipment. At trial it emerged that plaintiff and Owen Equipment both were citizens of the same State. The question presented thus was whether a plaintiff, "[i]n an action in which federal jurisdiction is based on diversity of citizenship," may "assert a claim against a third-party defendant when there is no independent basis for federal jurisdiction over that claim." 437 U.S. at 367. The Court observed that *Gibbs* "involved *pendent* jurisdiction, which concerns the resolution of a plaintiff's federal- and state- law claims against a single defendant in one action." *Id.* at 370 (emphasis added). *Owen Equipment*, in contrast, involved "the doctrine of ancillary jurisdiction," which the Court held does not extend "to a plaintiff's cause of action against a citizen of the same State in a diversity case." *Id.* at 377.[9]

The Court noted that the plaintiff could not have "originally brought suit" naming both the defendant and the third-party defendant, since then citizens of the same State would have been on both sides of the litigation. *Id.* at 374. The Court rejected, as inconsistent with § 1332, reasoning under which "a plaintiff could defeat the statutory requirement of complete diversity by the simple expedient of suing only those defendants who were of diverse citizenship and waiting for them to implead nondiverse defendants." *Id.* The Court recognized that "the exercise of ancillary jurisdiction over nonfederal claims has often been upheld . . ." "typically" in situations "involv[ing] claims by a defending party haled into court against his will, or by another person whose rights might be irretrievably lost unless

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[9] Petitioners cite (Pet. Br. 6) post-*Gibbs* decisions of the lower courts invoking the doctrine of pendent-party jurisdiction in diversity cases. The Court questioned those decisions in *Moor v. County of Alameda*, 411 U.S. 693, 712-15 (1973), and the Court made clear in *Aldinger* and *Owen Equipment* that such decisions exceeded the bounds of pendent-party jurisdiction.

he could assert them in an ongoing action in a federal court." *Id.* at 375-76. The Court stated that "[a] plaintiff cannot complain if ancillary jurisdiction does not encompass all of his possible claims, . . . since it is he who has chosen the federal rather than the state forum." *Id.* at 376.

3. *Finley* and § 1367. In *Finley v. United States*, 490 U.S. 545 (1989), the plaintiff sued the United States under the Federal Tort Claims Act (FTCA), and sought to amend her complaint to add state-law claims against additional parties. The claims satisfied the *Gibbs* "common nucleus of operative fact" standard, and a federal court was the only forum in which the federal and state claims could be heard together. The Court nevertheless held that the federal court lacked jurisdiction over state-law claims against other parties arising out of the same transaction or occurrence absent an independent basis of federal jurisdiction. *Gibbs* was a different situation, the Court said, because of the "central distinction . . . between new parties and parties already before the court." 490 U.S. at 549 n.2. Citing *Zahn*, *Owen Equipment*, and *Aldinger*, the Court held that "with respect to the addition of parties, as opposed to the addition of only claims, we will not assume that the full constitutional power has been congressionally authorized, and will not read jurisdictional statutes broadly." *Id.* at 549. The Court added, however: "Whatever we say regarding the scope of jurisdiction conferred by a particular statute can of course be changed by Congress." *Id.* at 556.[10] Less than a year later,

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[10] Three of the four dissenting Justices in *Finley* would have "distinguish[ed] between diversity and federal-question cases." *Finley*, 490 U.S. at 571 (Stevens, J., dissenting). The dissenting Justices concluded that "[t]he doctrine of pendent jurisdiction rests in part on a recognition that forcing a federal plaintiff to litigate his or her case in both federal and state courts impairs the ability of the federal court to grant full relief." *Id.* at 576 (Stevens, J., dissenting) (internal quotations and citations omitted). In contrast, "[n]o such special federal interest is present when federal jurisdiction is invoked on the basis of the diverse (continued...)

Congress enacted 28 U.S.C. § 1367 as part of the Judicial Improvements Act of 1990, Pub. L. No. 101-650, 104 Stat. 5089.

4. This Case. The court of appeals observed that the facts of this case are "not normally the stuff of lawsuits in federal court." Pet. App. 1a. Beatriz Blanco-Ortega, then nine years old, "cut her pinky finger while opening a can of Star-Kist tuna." *Id.* at 5a, 46a. The cut was "about a quarter of an inch deep, and about three-quarters of an inch long." *Id.* at 47a. The next day, a surgeon "successfully repaired" the damaged finger. *Id.* at 5a. Medical expenses for the surgery were less than $5,000, some of which were covered by insurance. *Id.* at Pet. App. 48a. Afterwards, Beatriz "underwent a series of successful physical therapies." *Id.* at 47a. Today, the finger "bears a small scar and is slightly bent." *Id.* at 5a. Beatriz is able to participate in all activities in which she wants to participate, and her life is back to "normal." *Id.* at 48a.

5. The Lower Court Decisions. Beatriz, her mother, her father (who is divorced from Beatriz's mother and does not live with Beatriz, Pet. App. 10a), and her sister (who was a student in Washington D.C. at the time of the injury, *id.* at 9a), filed a diversity action in the U.S. District Court for the District of Puerto Rico against Star-Kist Foods, Inc., Star-Kist Caribe, Inc., and their unnamed insurers. *Id.* at 2a. The district court granted Respondent's motion to dismiss the complaint for lack of complete diversity, on the ground that Star-Kist Caribe is a citizen of Puerto Rico. *Id.*

Plaintiffs re-filed their complaint, naming only Star-Kist Foods, Inc., and its unnamed insurers as defendants. Pet. App. 2a. Respondent moved for summary judgment on the ground that none of the plaintiffs could satisfy the $75,000

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citizenship of the parties and the state-law claims may be litigated in a state forum." *Id.* at 577 (citations omitted).

matter-in-controversy requirement of 28 U.S.C. § 1332. The district court agreed and again dismissed the complaint for lack of jurisdiction. *Id.* at 3a.

The court of appeals affirmed in part and reversed in part. It concluded that it appears to a legal certainty that only Beatriz can satisfy the $75,000 matter-in-controversy requirement. Pet. App. 3a - 10a, citing *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283 (1938). The court of appeals then addressed whether 28 U.S.C. § 1367 allows Beatriz's family members to proceed in federal court "on the basis of Beatriz's jurisdictionally sufficient claim." Pet. App. 10a.

The court considered two possible readings of § 1367. The first "turns on Congress's failure [in § 1367(b)] to include Rule 20 plaintiffs among those parties who cannot rely on supplemental jurisdiction where doing so would be inconsistent with § 1332." *Id.* at 15a. The second interpretation "emphasizes the requirement in § 1367(a) that the district court must first have 'original jurisdiction' over an action before supplemental jurisdiction can apply." *Id.* at 16a. The court of appeals concluded that "plausible textual arguments can be made in favor of either of these readings," but that the second is preferable for several reasons. *Id.*

First, § 1367(a) invokes the language of "[n]early every jurisdictional grant in Title 28" by specifying "that supplemental jurisdiction can only apply in a 'civil action of which the district courts have original jurisdiction.'" Pet. App. 17a. Under "well-settled law, joinder and aggregation have different implications for the existence of 'original jurisdiction' in federal question and diversity cases." *Id.* Under 28 U.S.C. § 1331, "[a]ll that is required is [a] federal question," and "[j]oinder questions arise only after 'original jurisdiction' is established." Pet. App. 18a. "Under § 1332, by contrast, joinder and aggregation questions can actually *determine* whether the district court has 'original

jurisdiction.'" *Id.* "*Strawbridge* and *Clark* . . . are binding interpretations of the diversity statute. . . . Unless both rules are satisfied, the statute does not confer original jurisdiction on the district court." *Id.* (citations omitted).

Second, the court's interpretation of § 1367 is consistent with the meaning of identical language in the removal statute, 28 U.S.C. § 1441. *Id.* at 21a-22a.

Third, this interpretation of § 1367 "aligns statutory supplemental jurisdiction with the judicially developed doctrines of pendent and ancillary jurisdiction as they existed prior to *Finley*." *Id.* at 22a.

Fourth, the alternative interpretation of § 1367 would have "surprising and far-reaching consequences," including overturning the complete diversity rule of *Strawbridge*. *Id.* at 27a. Congress surely did not intend to "overturn[] nearly 200 years of case law interpreting § 1332 and authorize[] a potentially huge expansion of the federal docket . . . by failing to mention Rule 20 plaintiffs in § 1367(b)." *Id.*

Finally, the legislative history of § 1367 strongly corroborates this interpretation of the statute. Pet. App. 30a-32a.[11]

Judge Torruella concurred in part and dissented in part. Pet. App. 33a-45a. He concluded that § 1367 confers supplemental jurisdiction when "a district court . . . ha[s] original jurisdiction over a claim." *Id.* at 38a. In this case, the district court has original jurisdiction over Beatriz's claim, and therefore it may assert supplemental jurisdiction over claims of the other family members because they arise

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[11] The court of appeals concluded that "class actions raise unique problems." Pet App. 12a n.7. *See also id.* at 32a n.19 ("application of § 1367 to diversity-only class actions is a different problem for several reasons").

out of the same case or controversy and none of the exceptions of 1367(b) or (c) applies. *Id.*

SUMMARY OF ARGUMENT

1. Section 1367 confers supplemental jurisdiction only in a "civil action of which the district courts have original jurisdiction." 28 U.S.C. § 1367(a). The terms "civil action" and "original jurisdiction" are borrowed from other federal jurisdictional statutes, including 28 U.S.C. §§ 1331 and 1332. "[W]here Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word." *Morrissette v. United States*, 342 U.S. 246, 263 (1952).

A "civil action" may include more than one claim, and therefore the term "civil action" is not synonymous with the term "claim." There is unusually strong textual evidence that Congress did not intend the term "civil action" in § 1367(a) to mean "claim": Congress actually used the term "claims" three times in subsection (a). Courts are not free to rewrite statutory text by substituting one term for another – but that is precisely what Petitioners ask the Court to do. Certainly such an interpretation cannot be compelled by the plain language of the statute.

It is well-settled that the presence of a federal claim suffices to bring a civil action within the district court's original jurisdiction under the federal question statute, 28 U.S.C. § 1331. In contrast, it is equally clear that in diversity cases, the court lacks original jurisdiction of the civil action unless each plaintiff satisfies the jurisdictional requirements of the diversity statute, 28 U.S.C. § 1332.

When 28 U.S.C. § 1367(a) is understood according to its terms, § 1367(b) makes sense. Subsection (b) brings supplemental jurisdiction into close alignment with pendent and ancillary jurisdiction prior to *Finley*, and preserves the

rationale of *Owen Equipment* by ensuring that plaintiffs cannot defeat the jurisdictional requirements of § 1332 by omitting parties who do not meet those requirements from their complaints and then adding them later. Although this interpretation of the statutory text is not free from difficulty, it is far preferable to the alternative interpretation, which leads to absurd results.

There is no basis for distinguishing between the matter-in-controversy and complete diversity requirements, and therefore the alternative interpretation of § 1367 leads to the conclusion that "Congress overturned nearly 200 years of case law interpreting § 1332 and authorized a potentially huge expansion of the federal docket, . . . not by amending the diversity statute itself, but instead by failing to mention Rule 20 plaintiffs in § 1367(b)." Well-established principles of statutory interpretation argue strongly against any such interpretation of § 1367.

2. The legislative history of § 1367 strongly supports this interpretation of the statute. The House Report that accompanied the legislation, which was adopted by the Senate, states that § 1367 is a "noncontroversial" and "relatively modest" provision. The Report states that the purpose of § 1367 is to "authorize jurisdiction in a case like *Finley*, as well as essentially restore the pre-*Finley* understandings of the authorization for and limits on other forms of supplemental jurisdiction." The Report further states that a district court may not "exercise supplemental jurisdiction . . . when doing so would be inconsistent with the jurisdictional requirements of the diversity statute." And the Report specifically addresses the application of § 1367 to diversity-only class actions and states that it preserves the holdings of both *Zahn* and *Ben Hur*.

3. Policy considerations also support the court of appeals' interpretation of § 1367. In diversity cases, efficiency considerations are outweighed by the need to limit

the caseload of the federal courts as well as significant federalism concerns. Diversity actions currently account for more than 23 percent of all civil actions filed in district courts, nearly 30 percent of civil cases excluding prisoner petitioners, and about half of all civil trials in the district courts. Diversity filings have risen by more than 23 percent since 2001, and the Administrative Office of the Courts predicts continuing increases unless steps are taken to limit diversity jurisdiction. Diluting the jurisdictional requirements in diversity actions could cause this situation to become much worse. More than 16 *million* civil cases are filed in the state courts each year. If even a small percentage of these cases were to be litigated in federal court, the capacity of the federal judicial system would be overwhelmed. Consequently, weakening the complete diversity and matter-in-controversy requirements raises serious practical concerns.

ARGUMENT

This Court recently reaffirmed that "[s]tatutory construction is a 'holistic endeavor.'" *Koons Buick Pontiac GMC, Inc. v. Nigh*, 125 S. Ct. 460, 467 (2004) (quoting *United Sav. Ass'n. of Tex. v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 371 (1988)). That principle applies to the interpretive issue in this case. The courts of appeals have arrived at strikingly different interpretations of § 1367 based on their reading of the "plain" language.[12] In

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[12] *Compare In re Abbott Labs.*, 51 F.3d 524, 528 (5th Cir. 1995) (plain language of § 1367 overrules *Zahn*); *Stromberg Metal Works, Inc. v. Press Mech., Inc.*, 77 F.3d 928, 931 (7th Cir. 1996) (same); *Gibson v. Chrysler Corp.*, 261 F.3d 927, 939 (9th Cir. 2001) (same); *Rosmer v. Pfizer, Inc.*, 263 F.3d 110, 118 (4th Cir. 2001) (same); *Allapattah Servs., Inc. v. Exxon Corp.*, 333 F.3d 1248, 1255 (11th Cir. 2003) (same), *cert. granted*, 125 S.Ct. 317 (2004), *with Leonhardt v. Western Sugar Co.*, 160 F.3d 631, 640 (10th Cir. 1998) (plain language of § 1367 preserves *Zahn*); *Trimble v. Asarco, Inc.*, 232 F.3d 946, 962 (8th Cir. 2000) (same); (continued...)

fact, any effort to interpret § 1367 based solely on the statutory text runs into difficulties, and some interpretations lead to irrational results. Accordingly, other indicia of congressional intent must be consulted. *See Koons*, 125 S. Ct. at 468; *id.* at 470 (Stevens, J. concurring) ("always appropriate to consider all available evidence of Congress' true intent."); *id.* at 471 (Kennedy, J., concurring) (appropriate to consider "other interpretive resources" where "text is not altogether clear"); *id.* (Thomas, J., concurring) (appropriate to look beyond current statutory text that "is susceptible of several plausible interpretations"); *Green v. Bock Laundry Mach. Co.*, 490 U.S. 504, 527 (1989) (Scalia, J. concurring) ("entirely appropriate to consult all public materials" when confronted with a statute that "if interpreted literally, produces an absurd, and perhaps unconstitutional, result"). When all the available interpretive resources are considered – including prior decisions of this Court that established the legal context for § 1367, legislative history, and the consequences of various interpretations – the evidence points to the conclusion that § 1367 preserves the matter-in-controversy requirement of § 1332.

I. SECTION 1367 DOES NOT ALTER THE REQUIREMENTS FOR ORIGINAL JURISDICTION IN DIVERSITY CASES

A. Section 1367(a) Preserves The Jurisdictional Requirements Of § 1332

Subsection (a) of § 1367 provides:

Rosmer v. Pfizer, Inc., 272 F.3d 243, 253 (4th Cir. 2001) (Motz and Luttig, JJ., dissenting from the denial of rehearing en banc) (same); *Allapattah Servs., Inc. v. Exxon Corp.*, 362 F.3d 739 (11th Cir. 2004) (Tjoflat and Birch, JJ, dissenting from the denial of rehearing en banc) (same), *cert. granted*, 125 S.Ct. 317 (2004). *Cf. Meritcare Inc. v. St. Paul Mercury Ins. Co.*, 166 F.3d 214, 222 (3d Cir. 1999) (finding "much to be said for *Leonhardt's* view" of the plain language).

> (a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

By its terms, subsection (a) provides that supplemental jurisdiction is available only in a "civil action of which the district courts have original jurisdiction." In requiring the district court to have "original jurisdiction" of a "civil action," Congress borrowed terms that it has used repeatedly in other jurisdictional statutes. *See, e.g.*, 28 U.S.C. § 1331 ("The district courts shall have *original jurisdiction* of all *civil actions* arising under the Constitution, laws, or treaties of the United States."); 28 U.S.C. § 1332 ("The district courts shall have *original jurisdiction* of all *civil actions* where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between . . . citizens of different States."); 28 U.S.C. § 1441(a) ("Except as otherwise expressly provided by Act of Congress, any *civil action* brought in a State court of which the district courts of the United States have *original jurisdiction*, may be removed by the defendant or the defendants, to the district court of the United States.") (emphasis added). It is well-settled that "where Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word." *Morrissette v. United States*, 342 U.S. 246, 263 (1952). The terms "civil

action" and "original jurisdiction" unquestionably are "terms of art" with an "accumulated . . . legal tradition and meaning."

1. "Civil Action." A "civil action" is a non-criminal judicial proceeding. *See* BLACK'S LAW DICTIONARY 31 (8th ed. 2004) (an "action" is "a civil or criminal judicial proceeding"); Fed. R. Civ. P. 2 ("There shall be one form of action to be known as 'civil action.'"); Fed. R. Civ. P. 3 ("A civil action is commenced by filing a complaint with the court."). Under the Federal Rules of Civil Procedure, a "civil action" may include more than one "claim." *See, e.g.*, Fed. R. Civ. P. 8 ("A party may . . . state as many separate claims . . . as the party has . . . whether based on legal, equitable, or maritime grounds."); Fed. R. Civ. P. 13 (authorizing counterclaims and cross-claims). Accordingly the terms "civil action" and "claim" are not synonyms.

In this instance, there is unusually strong textual evidence that Congress did *not* intend "civil action" to have the same meaning as "claim": Congress actually used the term "claims" in subsection (a) – not once, but three times. If Congress had intended to confer supplemental jurisdiction whenever a district court has original jurisdiction of a "claim," it could have said so quite easily. A court should be wary of accepting any interpretation of § 1367 that requires it to substitute the term "claim" for "civil action." *See McNeil v. United States*, 503 U.S. 206, 111 (1993) (courts are "not free to rewrite the statutory text").

But substituting "claim" for "civil action" is exactly what Petitioners and their amicus ask the Court to do. They assert that a "civil action" is within the district court's "original jurisdiction" "if *at least one claim* in the case meets the jurisdictional requirements to maintain an action in federal court." Pet. Br. 23; *see also* U.S. Br. at 11 (supplemental jurisdiction available "as long as the district court possessed original jurisdiction over *some* of the claims

asserted in the case"); Pet. App. 38a (Torruella, J., dissenting) (§ 1367 authorizes a district court to exercise supplemental jurisdiction so long as it has "original jurisdiction over a *claim*") (emphasis added). Such judicial rewriting of the statutory text, if it can be justified at all, certainly is not compelled by plain statutory language.

Petitioners suggest (Pet. Br. 23) that Congress demonstrated that when it said "civil action" it meant "claim" by distinguishing between "claims in the action within such original jurisdiction" and "all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III." § 1367(a). But this statutory language simply tracks the *Gibbs* test, which asks whether "[t]he state and federal *claims* must derive from a common nucleus of operative fact." *Gibbs*, 383 U.S. at 725 (emphasis added). Claims relate to other claims, and therefore the text of § 1367(a) makes an apples-to-apples comparison between "claims in the action within such original jurisdiction" and "other claims." [13]

Petitioners also rely on the final sentence of subsection (a), which states that "[s]uch supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties." This sentence, which directly addresses this Court's decision in *Finley*, does not modify the requirement that the district court must have original jurisdiction of the civil action before it can exercise supplemental jurisdiction. Nor does it modify the requirements for establishing original jurisdiction under §§ 1331, 1332, or other jurisdictional statutes — including the rules that each plaintiff in a diversity action must satisfy both the complete diversity and matter-in-controversy requirements.

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[13] Moreover, the statutory text refers to "*claims* in the action within such original jurisdiction" rather than to a single claim in the action.

Ultimately, Petitioners do not take their own textual argument seriously. Less than one page after making the argument, Petitioners state that the matter "takes on added complexity" in diversity cases because a district court does not have original jurisdiction under § 1332 unless the plaintiff's "claims [are] brought in a suit in which all plaintiffs are diverse from all defendants." Pet. Br. 24. Petitioners are correct on this point – but it is completely inconsistent with their reading of § 1367(a). If § 1367(a) confers supplemental jurisdiction whenever the district court has original jurisdiction of a single claim, it is sufficient for one plaintiff to be diverse from one defendant. Petitioners would like to avoid this result, but they can do so only by repudiating their own reading of § 1367(a).

2. "Original Jurisdiction." By its terms, § 1367 does not confer "original jurisdiction" on the district courts. Instead, it confers only "supplemental jurisdiction," and then only if the district court has original jurisdiction of the civil action. The title of § 1367 ("Supplemental Jurisdiction") confirms the meaning of the statutory text. In order to determine whether it has original jurisdiction, a district court must look to a statute that confers original jurisdiction – such as 28 U.S.C. §§ 1331 or 1332.[14]

a. Federal Question Cases. In federal question cases, it has long been established that the presence of a federal question suffices to give the district court original jurisdiction over the civil action under 28 U.S.C. § 1331. In

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[14] As the court of appeals explained, Pet. App. 24a, this reading of the statutory text does not give multiple meanings to the term "original jurisdiction" in § 1367. Instead, § 1367 simply provides that the district court must have original jurisdiction of the civil action, under any of the federal statutes that confer original jurisdiction, before it can exercise supplemental jurisdiction under § 1367. Congress knew and presumably meant to adopt the accumulated legal tradition and meaning of "original jurisdiction" in the various statutes conferring such jurisdiction.

Osborn, the Court held that when a federal question "forms an ingredient of the original cause, it is in the power of Congress to give the Circuit Courts jurisdiction of that cause, although other questions of fact or of law may be involved in it." 22 U.S. at 822-23. *Osborn* thus "rejected" the contention that "the presence in a federal lawsuit of questions which were not dependent on the construction of a law of the United States prevented the federal court from exercising Art. III jurisdiction." *Aldinger*, 427 U.S. at 6-7. In *Gibbs*, *Aldinger*, and *Finley* the Court considered the circumstances in which district courts that have original jurisdiction under § 1331, based on the presence of a federal question, may exercise pendent jurisdiction over additional state-law claims. None of those cases casts any doubt on the principle that a district court has original jurisdiction in a civil action under 28 U.S.C. § 1331 if the action presents at least one claim that arises under the Constitution or laws of the United States. In "a federal question case . . . [t]he District Court's original jurisdiction derives from [the presence of] federal claims. . . . Those federal claims suffice to make the actions 'civil actions' within the 'original jurisdiction' of the district courts. . . . Nothing in the jurisdictional statutes suggests that the presence of related state law claims somehow alters the fact that the [plaintiff's] complaints, by virtue of their federal claims, were 'civil actions' within the federal courts' 'original jurisdiction'" *Int'l Coll. of Surgeons*, 522 U.S. at 166 (citations omitted).

b. Diversity Cases. Diversity cases are different, because original jurisdiction in diversity cases is "party-based" rather than "claim-based." Section 1332 confers original jurisdiction if the matter in controversy (i) exceeds $75,000 and (ii) is between citizens of different States. Since *Strawbridge*, the diversity requirement has been interpreted to require *complete* diversity. *See Tashire*, 386 U.S. at 530-31. Because *every* plaintiff must be diverse from every defendant, the court cannot determine whether it has original

jurisdiction under § 1332 until it has considered the citizenship of *every* party. If any plaintiff is a citizen of the same State as any defendant, the requirement is not satisfied and the district court lacks original jurisdiction over the civil action. *See Wisconsin Dep't of Corr. v. Schacht*, 524 U.S. 381, 389 (1998) ("The presence of [a] nondiverse party automatically destroys original jurisdiction.").

The matter-in-controversy requirement, like the complete diversity requirement, has been interpreted to require that *every* plaintiff must have the requisite amount in controversy. *Clark v. Paul Gray, Inc.*, 306 U.S. 583 (1939); *Zahn v. Int'l Paper Co.*, 414 U.S. 291, 294 (1973). Just as with the complete diversity requirement, the district court cannot determine whether it has original jurisdiction without considering *every* plaintiff in the case. And just as with the complete diversity requirement, if a single party fails to meet the matter-in-controversy requirement, the requirement is not met and the district court lacks "original jurisdiction of [the] civil action." 28 U.S.C. § 1332(a)." *Id.*

In *International College of Surgeons*, the complaint raised both federal claims and state-law claims. 522 U.S. at 160. This Court refused to consider the state-law claims in isolation, and to ask whether those claims "constitute[d] a 'civil action . . . of which the district courts . . . have original jurisdiction.'" *Id.* at 166. The Court stated: "*Because this is a federal question case* . . . [t]he District Court's original jurisdiction derives from [the plaintiff's] federal claims, not its state law claims. Those federal claims suffice to make the actions 'civil actions' within the 'original jurisdiction' of the district courts for purposes of removal . . . . Nothing in the jurisdictional statutes suggests that the presence of related state law claims somehow alters the fact that [the] complaints, *by virtue of their federal claims*, were 'civil actions' within the federal courts' 'original jurisdiction.'" *Id.* (emphasis added and citations omitted). It was in this context that the Court stated: "Having thus established

federal jurisdiction, the relevant inquiry respecting the accompanying state [law] claims is whether they fall within a district court's supplemental jurisdiction." *Id.* at 167. "And *that* inquiry" – *not* the original jurisdiction inquiry – "turns on whether the state law claims 'are so related to [the] federal claims . . . that they form part of the same case or controversy.' §1367(a)". *Id.*

B. The Text Of Subsection (b) Supports The Conclusion That § 1367 Preserves The Jurisdictional Requirements Of § 1332

Subsection (b) of § 1367 provides:

> In any civil action of which the district courts have original jurisdiction founded solely on § 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under [Federal Rules of Civil Procedure] 14, 19, 20, or 24 . . . or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

Although the text of subsection (b) is not a model of clarity, several points are clear from the text. *First*, subsection (b) applies to civil actions in which original jurisdiction is based solely on diversity of citizenship, and it provides that in such actions the district court shall not have supplemental jurisdiction over certain claims.

Second, subsection (b) refers to four Federal Rules of Civil Procedure – Rules 14, 19, 20, and 24 – dealing with joinder of additional parties to a civil action.[15]

Third, the claims expressly excluded from the district court's supplemental jurisdiction are claims "by *plaintiffs*" or persons "proposed to be joined as plaintiffs" or "seeking to intervene as plaintiffs." 28 U.S.C. § 1367(b). Subsection (b) does not expressly exclude claims by *defendants*, persons

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[15] The text of the rules is reproduced in the Appendix. *See* App., *infra*, 7a-12a. Rule 14 (entitled "Third-Party Practice") authorizes a defendant to serve a complaint on a "third-party defendant" who may be liable to the defendant for all or part of the plaintiff's claim against the defendant. When a defendant asserts a counterclaim against a plaintiff, Rule 14(b) authorizes the *plaintiff* to bring in a third party in the same circumstances in which a defendant could do so.

Rule 19 ("Joinder of Persons Needed for Just Adjudication") provides that a person shall be joined if feasible when (1) "in the person's absence complete relief cannot be accorded" or (2) "disposition of the action in the person's absence may . . . impair or impede the person's ability to protect" an interest relating to the action or subject the other parties "to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations." Fed. R. Civ. P. 19(a). If such a person cannot be joined and is determined to be an "indispensable" party, the action must be dismissed. Fed. R. Civ. P. 19(b).

Rule 20 ("Permissive Joinder of Parties") provides that "[a]ll persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact in common to all of these persons will arise in the action." Fed. R. Civ. P. 20(a).

Rule 24 ("Intervention") authorizes both intervention of right (when a federal statute "confers an unconditional right to intervene" or "the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect [an] interest" relating to the action, Fed. R. Civ. P. 24(a)) and permissive intervention (when a federal statute confers a conditional right to intervene or "the applicant's claim or defense and the main action have a question of law or fact in common," Fed. R. Civ. P. 24(b)).

proposed to be joined as defendants, or seeking to intervene as defendants.

When subsection (a) is read according to its terms, as conferring supplemental jurisdiction only where the district court has original jurisdiction over the civil action, subsection (b) makes sense. As the court of appeals explained (Pet. App. 22a-23a) subsection (b) brings § 1367 into close alignment with the doctrines of pendent and ancillary jurisdiction as they had been developed by this Court prior to *Finley*, and prevents plaintiffs from using supplemental jurisdiction as a device to defeat the jurisdictional requirements of § 1332.

This Court addressed one such situation in *Owen Equipment*. The defendant filed a third-party complaint and the plaintiff then asserted a claim against the nondiverse third-party defendant under Rule 14(a). *See* 437 U.S. at 370. The Court declined to allow "a plaintiff [to] defeat the statutory requirement of complete diversity by the simple expedient of suing only those defendants who were of diverse citizenship and waiting for them to implead nondiverse defendants." *Id.* at 375. Section 1367(b) directly addresses the *Owen Equipment* situation by prohibiting the exercise of supplemental jurisdiction in diversity cases "over claims by plaintiffs against persons made parties under" Rule 14, where exercising such jurisdiction would be inconsistent with the jurisdictional requirements of § 1332. The other rules specified in subsection (b) present additional situations in which plaintiffs could potentially evade the complete diversity and matter-in-controversy requirements by leaving nondiverse parties out of their original complaint.[16]

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[16] The report that accompanied § 1367 states that it "implement[s] the principal rationale of *Owen Equipment*." H.R. REP. NO. 101-734, at 29 n.16 (1990).

Subsection (b) does not expressly forbid a district court from exercising supplemental jurisdiction over claims by additional parties permissively joined as plaintiffs under Rule 20. But as explained above, *see* page 23 *supra*, the addition of a plaintiff who does not meet the jurisdictional requirements of § 1332 destroys original jurisdiction under that statute, and in the absence of original jurisdiction there is no basis for the court to exercise supplemental jurisdiction.

As the court of appeals noted (Pet. App. 25a) this interpretation of subsection (b) is not without its difficulties. For example, why would Congress omit a reference to "persons proposed to be joined as plaintiffs under Rule 20" but include a reference to "persons proposed to be joined as plaintiffs under Rule 19"? After all, joinder of a plaintiff under Rule 19 or Rule 20 destroys complete diversity. Here, an understanding of the doctrines of pendent and ancillary (and now supplemental) jurisdiction is instructive. Pre-1990 judicial decisions had allowed intervention of right under Rule 24(a) without regard to the intervenor's citizenship (so long as the intervenor was not an indispensable party), but had reached the opposite result when intervention of right was sought under Rule 19(a). *See Smith Petroleum Serv., Inc. v. Monsanto Chem. Co.*, 420 F.2d 1103, 1113-15 (5th Cir. 1970), *cited in Owen Equip.*, 437 U.S. at 376 n.18. Congress resolved this anomaly by prohibiting the exercise of supplemental jurisdiction in *both* situations, even though the denial of intervention may lead to dismissal of the entire action. This facet of subsection (b) demonstrates the strength of Congress's commitment to preserving the jurisdictional requirements of § 1332. It also provides an explanation for the reference to Rule 19: Congress wanted to make clear that

henceforth plaintiffs would be treated the same way under Rules 19 and 24.[17]

Similarly, why did Congress find it necessary to prohibit "claims by plaintiffs against persons made parties under Rule . . . 19 [or] 20"? If plaintiffs join a nondiverse defendant under Rule 19 or 20, the district court lacks original jurisdiction under § 1332. Significantly, the statutory text does not forbid joinder of nondiverse defendants; instead, it forbids "claims by plaintiffs against persons made parties under Rule 19 [or] 20." The text thus leaves room for the joinder of nondiverse defendants, so long as plaintiffs do not assert claims against them. This statutory language dovetails with pre-1990 judicial decisions, in which "the exercise of ancillary jurisdiction over nonfederal claims ha[d] often been upheld in situations involving impleader, cross-claims, or counterclaims . . . involving claims by a defending party haled into court against his will, or by another person whose rights might be irretrievably lost unless he could assert them in an ongoing action in federal court." *Owen Equip.*, 437 U.S. at 375-76 & n.18 (citing cases).

This reading of the statutory text also answers the contention that "if each and every plaintiff in a diversity case must satisfy § 1332's requirements of complete 'diversity' and 'matter in controversy,' . . . then there remains no supplemental jurisdiction in diversity actions for district courts to exercise." U.S. Br. 15, quoting *Rosmer v. Pfizer,*

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[17] It is not clear that modifying the text of § 1367(b) to prohibit the exercise of supplemental jurisdiction over "persons proposed to be joined as plaintiffs under Rule 19 *or Rule 20*," would prohibit the naming of additional parties in the original complaint. The phrase "persons *proposed* to be joined as plaintiffs" (particularly when contrasted with the phrase "persons made parties" earlier in subsection (b)) refers to persons joined *after* the original complaint is filed. The language of subsection (b) thus suggests that Congress was relying on the requirements of original jurisdiction under § 1332 to bar the addition of nondiverse plaintiffs.

Inc., 263 F.3d 110, 120 (4th Cir. 2001). Section 1332 has not been interpreted to require "each and every" party to a diversity case to satisfy complete diversity and matter-in-controversy. In particular, those requirements were not applied to defendants haled into court against their will and persons whose rights might be irretrievably lost unless asserted in an ongoing action in federal court. *Owen Equip.*, 437 U.S. at 375-76.

This interpretation also dovetails with the final clause of § 1367(b), which prohibits the exercise of supplemental jurisdiction over the specified claims only "when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332." While this clause is not free of ambiguity – for example, it is not clear whether it applies to all or only part of subsection (b) – it clearly reflects congressional concern with preserving the jurisdictional requirements of § 1332. Moreover, "the jurisdictional requirements of section 1332" may be understood to include not only the complete diversity rule of *Strawbridge* and the matter in controversy rule of *Clark* and *Zahn*, but also the recognized exceptions to those rules. *See Gibson v. Chrysler Corp.*, 261 F.3d 927, 938 (9th Cir. 2001) (concluding that the final clause of subsection (b) "preserves ancillary (now supplemental) jurisdiction that existed under § 1332 prior to the passage of § 1367").[18]

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[18] Remarkably, Petitioners urge the Court to interpret the phrase "jurisdictional requirements of section 1332" to mean "the complete diversity requirement of section 1332." Pet. Br. 27-28. Petitioners contend (*id.* at 28) that their reading is "supported" by the fact that the language they prefer appeared in an earlier draft of the bill. Petitioners suggest (*id.* at 28-29) that the change was made "at least in part" to assuage the concern of law professors over cases involving aliens. Whether or not that is so, Petitioners once again are asking the Court to rewrite the statutory text.

Finally, this interpretation is supported by the text of the removal statute, which authorizes removal of "any civil action brought in a State court of which the district courts of the United States have original jurisdiction." 28 U.S.C. § 1441(a). If the term "original jurisdiction" in § 1441(a) did not encompass the doctrines of pendent and ancillary (and now supplemental) jurisdiction, then many cases that could be filed in federal court could not be removed, contrary to the general rule that "[t]he propriety of removal . . . depends on whether the case originally could have been filed in federal court." *Int'l Coll. of Surgeons*, 522 U.S. at 163 (citations omitted).

C. Section 1367 Should Be Interpreted To Avoid Absurd Consequences

Statutes should be interpreted to avoid incoherent and absurd results. *See, e.g., Green v. Bock Laundry Mach. Co.*, 490 U.S. 504, 510 (1989) ("[n]o matter how plain the text," Court will reject an interpretation that results in an "unfathomable" distinction between the rights of civil plaintiffs and defendants); *Burns v. United States*, 501 U.S. 129, 136-38 (1991) (rejecting, as absurd, interpretation that would deny defendants right to notice when court departs from Sentencing Guidelines *sua sponte* but would require notice when a departure is recommended in the presentence report or by the government); *United States v. Brown*, 333 U.S. 18 (1948) (rejecting, as absurd, interpretation of Federal Escape Act that would allow prisoners serving consecutive sentences, but not other prisoners, to escape with impunity). Interpreting § 1367 to overrule *Clark* and *Zahn* leads to absurd results that no rational Congress could have intended.

First, § 1367(b) undeniably prohibits the exercise of supplemental jurisdiction in circumstances in which strong arguments can be made that it should be allowed. For example, "claims by parties joined under Rule 19 because they are essential to adjudication are forbidden (if that spoils

diversity), but claims by parties joined under Rule 20 for convenience are allowed." *Stromberg Metal Works, Inc. v. Press Mech., Inc.* 77 F.3d 928, 932 (7th Cir. 1996). As the court observed in *Stromberg*, "What sense can this make?" *Id.* More generally, why would Congress close off indirect routes to defeating the jurisdictional requirements of the diversity statute while allowing unlimited joinder for convenience of plaintiffs that do not meet those requirements? It would be irrational for Congress to "lock all of the windows to the federal courthouse" tightly "while leaving the front door wide open." Pet. Reply Br. 11 in *Free v. Abbott Labs.*, 529 U.S. 333 (2000) (affirmed by an equally divided Court).[19]

Second, as noted above, one of the undisputed changes to prior law made by subsection (b) actually *narrowed* the availability of supplemental jurisdiction in the case of persons with a right to intervene. It makes no sense to eliminate supplemental jurisdiction under Rule 24(a) while greatly expanding joinder of plaintiffs for convenience under Rule 20.

Third, the text of § 1367 does not distinguish between the jurisdictional requirements of § 1332. Consequently, "if § 1367 permits the permissive joinder of plaintiffs who cannot meet the amount-in-controversy requirement, then it also permits the joinder of non-diverse plaintiffs." Pet. App. 27a. The result is that "Congress overturned nearly 200 years of case law interpreting § 1332 and authorized a

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[19] Petitioners note (Pet. Br. 42) that overruling *Zahn* and *Clark*, considered by itself, is not absurd. What *is* absurd, however, is to prohibit indirect means of avoiding the jurisdictional requirements of § 1332 (when there are strong arguments for making exceptions to those requirements), while simultaneously allowing plaintiffs to directly evade those requirements. *See West Va. Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 101 (1991) (in interpreting statutes, Court must "make sense rather than nonsense out of the corpus juris").

potentially huge expansion of the federal docket," and "it did so not by amending the diversity statute itself, but instead by failing to mention Rule 20 plaintiffs in § 1367(b)." *Id.*

D. There Is No Basis For Distinguishing The Complete Diversity Requirement From The Matter-In-Controversy Requirement

As explained above, *see* page 21 *supra*, Petitioners agree with Respondent that the district court lacks jurisdiction over a civil action under § 1332 unless every plaintiff satisfies the diversity requirement. Having made this concession, Petitioners' only remaining argument is that, even though § 1332 has been interpreted to require *every* plaintiff to satisfy the matter-in-controversy requirement, the district court nevertheless has jurisdiction over a civil action under § 1332 so long as a single plaintiff satisfies the requirement. *See* Pet. Br. 25. There is no textual or other basis for driving a wedge between the twin jurisdictional requirements of § 1332. Section 1367 preserves both requirements or neither.

The text of § 1332 sets out two requirements for "original jurisdiction of . . . civil actions": "the matter in controversy" must "exceed[ ] the sum or value of $75,000 . . . and [be] between . . . citizens of different States." 28 U.S.C. § 1332. Both requirements must be met to confer original jurisdiction of a civil action, and the statutory text does not distinguish between them or place one on a higher footing than the other. The language of § 1332 thus affords no basis for treating the two requirements differently.

Both statutory requirements unquestionably are jurisdictional. "It remains rudimentary law that '[a]s regards all courts of the United States inferior to this tribunal, two things are necessary to create jurisdiction, whether original or appellate. The Constitution must have given to the court the capacity to take it, and *an act of Congress must have supplied it . . . .*'" *Finley*, 490 U.S. at 547-48 (quoting *The Mayor v. Cooper*, 73 U.S. (6 Wall.) 247, 252 (1868);

(emphasis in original)). *See also Keene Corp. v. United States*, 508 U.S. 200, 207 (1993) ("Congress has the constitutional authority to define the jurisdiction of the lower federal courts.").

This Court's decisions holding that every plaintiff must meet the matter-in-controversy and diversity requirements are interpretations of the jurisdictional requirements of § 1332. *See, e.g., Snyder*, 394 U.S. at 336 (matter-in-controversy requirement is an interpretation of § 1332); *Tashire*, 386 U.S. at 530-31 (complete diversity requirement is an interpretation of § 1332). Perhaps the Court could have interpreted § 1332 to require only minimal diversity, or held that the "matter-in-controversy" requirement is satisfied if any plaintiff has the requisite amount in controversy. In fact, the Court has interpreted § 1332 to require *every* plaintiff to be of diverse citizenship, and *every* plaintiff to satisfy the amount in controversy requirement. This Court's decisions are an authoritative determination of the *meaning* of the language of § 1332 conferring "original jurisdiction of . . . civil actions." And Congress has amended § 1332 repeatedly without disturbing those interpretations.[20]

This Court's decisions allowing federal courts to cure jurisdictional defects in diversity cases by dismissing dispensable parties, rather than dismissing the entire civil action, do not undermine – and, in fact, confirm – that the defects are jurisdictional in nature, and if not cured would require dismissal of the civil action. In *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 836 (1989), for example, the Court held that a court of appeals, like a district court,

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[20] The Court could not have imposed the rule of *Clark* and *Zahn* as a matter of judicial policy. *See Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821) ("It is most true that this Court will not take jurisdiction if it should not: but it is equally true, that it must take jurisdiction if it should . . . . We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given.").

"may grant a motion to dismiss a dispensable party whose presence spoils statutory diversity jurisdiction." *Id.* at 827. *See also Caterpillar, Inc. v. Lewis*, 519 U.S. 61, 64, 67, 73 (1996) (a case that is removed to federal court at a time when complete diversity did not exist need not be remanded if the "jurisdictional defect is cured" before judgment is entered). *Newman-Green* and *Caterpillar* permit the federal courts to cure jurisdictional defects; they do not hold or suggest that federal courts have original jurisdiction over civil actions under § 1332 absent a "cure."

Similarly, the Court has allowed jurisdictional defects caused by the failure of all plaintiffs to meet the matter-in-controversy requirement to be cured by dismissing the plaintiffs who fail to meet the requirement, rather than by dismissing the entire action. Thus, in *Clark v. Paul Gray*, "where only one of several plaintiffs had a sufficiently large claim[,] . . . all other plaintiffs were dismissed from the suit." *Zahn*, 414 U.S. at 300.[21] The Court applied the same curative approach in *Zahn*, holding that "[e]ach plaintiff in a Rule 23(b)(3) class action must satisfy the jurisdictional amount, and any plaintiff who does not must be dismissed from the case. . . ." *Id.* at 301. As with the dismissal of nondiverse parties, these dismissals are a way of *curing* the jurisdictional defect. They do not suggest that a district court

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[21] In *Clark*, the Court decided the jurisdictional issue before reaching the merits. *See* 306 U.S. at 588-90. Rather than breaking off in the middle of its opinion to issue an order dismissing all but one of the plaintiffs, the Court instructed the district court to dismiss Paul Gray, Inc., on the merits and the other plaintiffs for want of jurisdiction. *See id.* at 600. This procedure hardly constitutes a holding that a federal court could retain jurisdiction over the civil action without curing the jurisdictional defect. *Cf. Newman-Green*, 490 U.S. at 832 (recognizing that district courts have "authority to allow a dispensable nondiverse party to be dropped at any time, even after judgment has been rendered," and holding that a court of appeals may choose between dismissing such parties itself or remanding to the district court).

can exercise original jurisdiction over a civil action under § 1332 without curing the defect.[22]

E. Principles Of Statutory Interpretation Support The Court Of Appeals' Interpretation

Other principles of statutory interpretation support the court of appeals' interpretation of § 1367. For example, "common sense suggests, by analogy to Sir Arthur Conan Doyle's 'dog that didn't bark,' that an amendment having the effect petitioner[s] ascribe to it would have been differently described by its sponsor, and not nearly as readily accepted." *Koons*, 125 S. Ct. at 468 (quoting *Church of Scientology of Cal. v. IRS*, 484 U.S. 9, 17-18 (1987)).[23] A closely related principle is that "Congress . . . does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions – it does not, one might say, hide elephants in mouseholes." *Whitman v. Am. Trucking Ass'n*, 531 U.S. 457, 467-68 (2001). As the court of appeals noted, if Congress had intended to overrule "nearly 200 years of case law interpreting § 1332" and to authorize "a potentially huge expansion of the federal docket," it is likely that it would have accomplished this result by amending § 1332 – and

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[22] In *Supreme Tribe of Ben-Hur v. Cauble*, 255 U.S. 356 (1921), the Court held that the complete diversity requirement does not apply to members of the class other than the representative parties, at least where jurisdiction over nondiverse class members is necessary to dispose of trust assets. *See id.* at 366-67. Class actions may be distinguished from other civil actions on the ground that members of a class, other than the representative plaintiffs, are not parties in the usual sense. *See Hansberry v. Lee*, 311 U.S. 32, 41 (1940) ("To the[] general rule[] [that a person is not bound by a judgment in litigation in which he is not a party] there is a recognized exception that . . . the judgment in a 'class' or 'representative' suit, to which some members of the class are parties, may bind members of the class or those represented who were not made parties to it.").

[23] *See also Department of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 342-43 (1999); *Chisom v. Roemer*, 501 U.S. 380, 396 & n.23 (1991); *Edmonds v. Compagnie Generale Transatlantique*, 443 U.S. 256, 266-67 (1979).

highly unlikely that it would have done so by failing to mention in § 1367 plaintiffs joined under Rule 20. Pet. App. 27a.[24]

In addition, statutes conferring diversity jurisdiction on the federal courts are subject to "strict construction," in order to accord "[d]ue regard for the rightful independence of state governments." *Snyder*, 394 U.S. at 340, quoting *Healy v. Ratta*, 292 U.S. 263, 270 (1934).

Finally, "[t]here is no canon against using common sense in construing laws as saying what they obviously mean." *Koons*, 125 S. Ct. at 469, quoting *Roscnen v. Ward*, 279 U.S. 337, 339 (1929) (Holmes, J.). Indeed, "[c]ommon sense is often more reliable than rote repetition of canons of statutory construction." *Id.* at 470 (Stevens, J., concurring). As Judge Pollak observed, to adopt Petitioners' position "is to say to Congress: 'We know what you meant to say, but you didn't quite say it. So the message from us in the judicial branch to you in the legislative branch is: 'Gotcha! And better luck next time.'" *Russ v. State Farm Mut. Auto. Ins. Co.*, 961 F. Supp. 808, 820 (E.D. Pa. 1997), quoted in *Meritcare*, 166 F.3d at 221.

II. THE LEGISLATIVE HISTORY STRONGLY SUPPORTS THE CONCLUSION THAT § §1367 PRESERVES THE COMPLETE DIVERSITY AND MATTER-IN-CONTROVERSY REQUIRE-MENTS

While the courts of appeals have arrived at different conclusions concerning the "plain meaning" of § 1367, there is widespread agreement that its legislative history shows that Congress intended to preserve the matter-in-controversy

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[24] *See* David L. Shapiro, *Continuity and Change in Statutory Interpretation*, 67 N.Y.U. L. REV. 921, 925 (1992) ("the dominant theme running through most interpretive [canons] . . . is that close questions of construction should be resolved in favor of continuity and against change").

and complete diversity requirements in diversity cases.[25] The House Report (which was adopted by the Senate) describes § 1367 as "noncontroversial" and "relatively modest." H.R. REP. NO. 101-734, at 15 (1990). It states that the purpose of § 1367 is to "authorize jurisdiction in a case like *Finley*, as well as essentially restore the pre-*Finley* understandings of the authorization for and limits on other forms of supplemental jurisdiction." *Id.* at 28. And it states that district courts may not "exercise supplemental jurisdiction . . . when doing so would be inconsistent with the jurisdictional requirements of the diversity statute." *Id.*

The origins of § 1367 can be traced to the Federal Courts Study Committee ("Study Committee" or "Committee"), a 15-member committee established by Congress in 1988 to study the federal courts and make recommendations for improvements. *See* 28 U.S.C. § 331 (1988). The Study Committee concluded that the federal courts faced an "impending crisis" because of their growing caseload. *Report of the Federal Courts Study Committee*, Part I, 4-10 (1990) ("Study Committee Report"). The Committee recommended measures to reduce the federal caseload, including "abolishing federal diversity jurisdiction," with limited exceptions. Study Committee Report, Part I, at 14. Among the Study Committee's other recommendations was that Congress respond to "[r]ecent decisions of the Supreme Court [that] raise doubts about the scope of pendent party and

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[25] *See* Pet. App. 30a (legislative history "strongly corroborates" conclusion that § 1367 preserves *Zahn*); *Meritcare*, 166 F.3d at 222 (legislative history "leaves no doubt that Congress intended *Zahn*'s restrictions to remain in effect"); *Leonhardt*, 160 F.3d at 640 ("legislative history . . . supports . . .interpretation" that *Zahn* is preserved). The courts of appeals that have reached the opposite conclusion generally have dealt with the legislative history by refusing to consider it. *See Abbott Labs.*, 51 F.3d at 528; *Stromberg Metal Works*, 77 F.3d at 931; *Gibson*, 261 F.3d at 939.

ancillary jurisdiction under existing federal statutes." Study Committee Report, Part II, at 47.[26]

Following the release of the Study Committee Report, the four congressional members of the Committee drafted a bill incorporating many of the Report's recommendations, including a provision on supplemental jurisdiction. *See* H.R. 5381, 101st Cong., § 120 (July 26, 1990). This draft provision expressly applied both to federal question and diversity cases, and would also have allowed federal courts to exercise supplemental jurisdiction over a plaintiff's claims against a nondiverse, third-party defendant, thereby overruling *Owen Equip. See id.*, § 120(a)(2).[27]

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[26] A subcommittee of the Study Committee initially proposed a draft supplemental jurisdiction provision that would have applied in diversity cases as well as federal question cases and, the subcommittee believed, would have "overrule[d] *Zahn*." *Report to the Federal Courts Study Committee of the Subcommittee on the Role of the Federal Courts and Their Relationship to the States*, 561 n.33 (1990), *reprinted in* 1 Federal Courts Study Comm., *Working Papers and Subcommittee Reports* (1990) ("Subcommittee Report"). However, the subcommittee's proposal was not accepted by the full Committee. *See* Study Committee Report, Part II, at 47-48; *see also Federal Courts Study Comm. Implementation Act & Civil Justice Reform Act: Hearing on H.R. 5381 & H.R. 3898 Before the Subcomm. on Courts, Intellectual Property & the Admin. of Justice of the House Comm. on the Judiciary*, 101st Cong., 94 (1990) (statement of Judge Joseph F. Weis, Jr., Chairman, Federal Courts Study Committee) ("[t]he Study Committee did not intend to encourage additional diversity litigation" where "complete diversity does not exist" or where "[the] other requirements of 28 U.S.C. § 1332 have not been met").

[27] The draft provision, § 120(a)(2), stated:

> If the original Federal claim in a civil action is founded solely on diversity of citizenship under section 1332, the original plaintiff may assert a non-Federal claim under paragraph (1) only against the original defendant or against a party or person who has been brought into the action by a party or person other than the plaintiff, unless the action was removed from a State court.

In a hearing on the bill before the House Subcommittee on Courts, Judge Joseph Weis, Jr., the Chairman of the Study Committee, objected to the supplemental jurisdiction provision because, "[a]s presently drafted, that section would enlarge the jurisdiction of the federal courts." *Federal Courts Study Comm. Implementation Act & Civil Justice Reform Act: Hearing on H.R. 5381 & H.R. 3898 Before the Subcomm. on Courts, Intellectual Property & the Admin. of Justice of the House Comm. on the Judiciary,* 101st Cong., 28 (1990) (hereinafter "Hearing"). (Statement of Judge Joseph F. Weis, Jr.). Judge Weis explained that the draft provision did not require that additional claims must first meet the jurisdictional requirements of § 1332: "Thus," he observed, "the statute would change the doctrine of complete diversity articulated in *Strawbridge v. Curtiss*, 3 Cranch 267 [(1806),] and *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365 (1978). The Study Committee did not intend to encourage additional diversity litigation in that fashion." *Id.* at 94. Judge Weis proposed a new provision that would allow federal courts to exercise supplemental jurisdiction over related claims "in any civil action on a claim for which the district courts have original jurisdiction," and that would prohibit courts from exercising jurisdiction in diversity cases over claims by plaintiffs against persons added under Rules 14 and 19, or over claims by persons added under Rule 24 when doing so "would be inconsistent with the complete diversity requirement of section 1332." *Id.* at 98.

The subcommittee accordingly revised the provision on supplemental jurisdiction and reported the bill to the full Judiciary Committee. *See* H.R 5381, 101st Cong., § 114 (Sept. 27, 1990). Importantly, the revised provision, which ultimately became § 1367, was even more restrictive than Judge Weis's version in two respects. *First*, the subcommittee changed the phrase "in any civil action *on a claim* for which the district courts have original jurisdiction" to "in any civil action of which the district courts have

original jurisdiction." *Id.* Omission of the phrase "on a claim" made clear that the district court must have original jurisdiction over a "civil action," not just a single "claim" within the action, before it can exercise supplemental jurisdiction. *Id. Second*, the new provision expanded the exceptions to exercising supplemental jurisdiction in diversity cases by prohibiting its use in cases where it would be inconsistent with "the *jurisdictional* requirements" – not just the "*complete diversity* requirement" – of § 1332. *Id.* (emphasis added). This change preserved both the matter-in-controversy requirement and the complete diversity requirement of § 1332.

Section § 1367(b) "is cast in a form – references by number to various Federal Rules of Civil Procedure – that makes the text, read in isolation, almost impenetrable to any audience other than specialists in civil procedure in the federal courts." *Russ*, 961 F. Supp. at 819 (Pollak, J.). Consequently, virtually all the members of Congress would have needed an "extrinsic aid to understanding" the text of § 1367. *Id.* Precisely such an aid to understanding was provided in the form of a House Subcommittee Report on the draft bill.[28] The Report explains that the bill's purpose "is to implement several of the more noncontroversial recommendations of the Federal Courts Study Committee," and it describes these recommendations as "relatively modest proposals." H.R. REP. NO. 101-734, at 15. In the section-by-section analysis of the bill, the Report states that the purpose of the supplemental jurisdiction provision, now § 1367, is to "authorize jurisdiction in a case like *Finley*, as well as essentially restore the pre-*Finley* understandings of the authorization for and limits on other forms of supplemental jurisdiction." *Id.* at 28. "In federal question cases," the Report explains, the statute "broadly authorizes the district

[28] The Senate Judiciary Committee adopted the House Report. *See* 136 Cong. Rec. S17580-81 (daily ed. Oct. 27, 1990).

courts to exercise supplemental jurisdiction over additional claims, including claims involving the joinder of additional parties." *Id.* "In diversity cases," in contrast, "the district courts may exercise supplemental jurisdiction, except when doing so would be inconsistent with the jurisdictional requirements of the diversity statute." *Id.* The Report explains that "[t]he net effect of subsection (b) is to implement the principal rationale of *Owen Equipment*." *Id.* at 29 n.16. The Report goes on to state:

> In diversity-only actions the district courts may not hear plaintiffs' supplemental claims when exercising supplemental jurisdiction would encourage plaintiffs to evade the jurisdictional requirement of 28 U.S.C. § 1332 by the simple expedient of naming initially only those defendants whose joinder satisfies section 1332's requirements and later adding claims not within original federal jurisdiction against other defendants who have intervened or been joined on a supplemental basis. In accord with case law, the subsection also prohibits the joinder or intervention of persons [or] plaintiffs if adding them is inconsistent with section 1332's requirements. The section is not intended to affect the jurisdictional requirements of 28 U.S.C. § 1332 in diversity-only class actions, as those requirements were interpreted prior to Finley." *Id.* at 29. (citing *Supreme Tribe of Ben Hur v. Cable*, 255 U.S. 356 (1921); and *Zahn v. Int'l Paper Co.*, 414 US. 291 (1973)).[29]

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[29] The Report refers specifically to diversity-only class actions in order to make clear that Congress intended to preserve not only *Zahn* but also *Ben* (continued...)

This legislative history strongly reinforces the textual interpretation set forth above. If § 1367 alters the long-settled rules of *Strawbridge*, *Clark*, and *Zahn*, it is hardly a "noncontroversial" and "relatively modest" provision. Any such change goes well beyond "essentially restor[ing] the pre-*Finley* understandings of . . . supplemental jurisdiction." And overruling *Zahn* is quite different from having no effect on *Zahn*.[30]

III. THE JURISDICTIONAL REQUIREMENTS OF § 1332 REGULATE THE CASELOAD OF THE FEDERAL COURTS AND FURTHER IMPORTANT PRINCIPLES OF FEDERALISM

Petitioners contend (Br. 42-46) that reading § 1367 expansively will promote judicial efficiency. But "efficiency . . . is not the only consideration a federal court should take into account in assessing the presence or absence of jurisdiction." *Aldinger*, 427 U.S. at 15 (internal quotation and citation omitted). "Especially is this true where, as here, the efficiency plaintiff seeks so avidly is available without question in the state courts." *Id.* Accordingly, "neither the convenience of litigants nor considerations of judicial economy can suffice . . . [t]o allow the requirement of complete diversity to be circumvented." *Owen Equip.*, 437

Hur, a case that is limited to the class-action context. The Report leaves no doubt that Congress intended to preserve the jurisdictional requirements of § 1332 in *all* diversity actions, not merely in class actions.

[30] Petitioners cite statements of law professors who played a role in drafting § 1367 as evidence that the reference to *Zahn* was inserted into the legislative history in order to change, rather than explain, the meaning of the statutory text. Pet. Br. 49; *see also Rosmer*, 263 F.3d at 121. The professors are not legislators, and in any event they said only that the text *could* be read to overrule *Zahn*, not that it *should* or *must* be read that way. *See* Thomas D. Rowe, et al., *Compounding or Creating Confusion about Supplemental Jurisdiction? A Reply to Professor Freer*, 40 EMORY L.J. 943, 960 n.90 (1991).

U.S. at 377 (internal citations omitted). Petitioners agree that efficiency considerations do not justify departures from complete diversity. *See* Pet. Br. 44-45. The same considerations apply to the matter-in-controversy requirement.

The complete diversity and matter-in-controversy requirements play a critical role in limiting the caseload of the federal courts. Weakening the matter-in-controversy rule would "add to the burdens of an already overloaded federal court system" and "seriously undercut the purpose of the jurisdictional amount requirement," which was "to check, to some degree, the rising caseload of the federal courts, especially with regard to . . . diversity of citizenship jurisdiction" *Snyder*, 394 U.S. at 340. Similarly, weakening the complete diversity requirement "could transfer into the federal courts numerous local controversies involving exclusively questions of state law." *Id.*

In fiscal year 2004, 60,334 diversity actions were filed in the federal courts, representing more than 23 percent of all civil actions filed in federal court and nearly 30 percent of civil filings excluding prisoner petitions.[31] Since 2001, diversity actions have increased by more than 23 percent, from 48,998 filings in the 12 months ending in September 2001 to the 60,334 cases filed in the 12 months ending in March 2004.[32] These statistics actually understate the burden

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[31] In the 12-month period ending March 31, 2004, a total of 255,851 civil cases were filed in federal district courts, of which 60,334 were based on diversity jurisdiction and 53,138 were prisoner petitions. *See* Admin. Office of the U.S. Courts, *Federal Judicial Caseload Statistics*, Table C-2 (2004), *available at* www.uscourts.gov/caseload2004/ tables/CO2Mar04 .pdf (last visited Jan. 17, 2005).

[32] *See* Admin. Office of the U.S. Courts, *Judicial Facts and Figures*, Table 2.1 (2003), *available at* www.uscourts.gov/judicialfactsfigures/ table2.01.pdf (last visited January 17, 2005); *see also*, note 31 *supra*. For Fiscal Year 2004, both total civil filings and diversity filings rose 11 percent from Fiscal Year 2003. *See 2004 Year-End Report on the* (continued...)

that diversity cases place on the federal courts. The Federal Courts Study Committee concluded that "[d]iversity cases account for about half the civil trials in federal court, and they frequently generate complex procedural and jurisdictional problems, making them more time-consuming and expensive to process than similar claims in the state courts." Study Committee Report, Parts I, II, at 3, 41. A 1988 study estimated that the burden of adjudicating diversity cases was equal to the workload of 193 district judges and 22 court of appeals judges. Federal Judicial Center, *The Budgetary Impact of Possible Changes in Diversity Jurisdiction* 8 (1988).

While roughly 60,000 diversity cases represents a large percentage of the federal courts' total caseload, this number is dwarfed by the number of civil actions filed in state courts. In 2002 (the most recent year for which statistics are available), "over *16 million* civil cases were filed in state courts," including *7.7 million* cases filed in state courts of general jurisdiction.[33] If watering down the jurisdictional requirements of § 1332 were to divert even a small percentage of these millions of state court civil actions into the federal courts, the federal judicial system could easily be overwhelmed.[34]

Federal Judiciary 9 & n.1. The Administrative Office estimates that, unless actions are taken to limit further diversity jurisdiction, annual diversity filings will increase to 113,200 by 2010 and 214,500 by 2020. *Long Range Plan for the Federal Courts*, 166 F.R.D. 49, 75 (1995) (Table 3).

[33] National Center for State Courts, *Examining the Work of State Courts* 18 (2003) (emphasis added), *available at* www.ncsconline.org/D_Research/csp/2003-Files/2003_civil.pdf (last visited Jan. 17, 2005); *id.* at 11. Civil filings in state courts "have risen steadily" in recent years, *id.* at 18, so the totals for 2003 and 2004 are likely even higher.

[34] Although the lower court decisions holding that § 1367 abrogates the requirement that each plaintiff must satisfy the matter-in-controversy rule do not appear to have been followed by huge increases in diversity (continued...)

Weakening the jurisdictional requirements of § 1332 would also raise serious federalism concerns. This Court has recognized that "[d]ue regard for the rightful independence of state governments" requires "strict construction" of § 1332. *Snyder*, 394 U.S. at 340, quoting *Healy v. Ratta*, 292 U.S. at 270. *See also City of Indianapolis v. Chase Nat'l Bank*, 314 U.S. 63, 76 (1941) (Congress has "jealous[ly] restrict[ed]" diversity jurisdiction to "avoid[] offense to state sensitiveness" and to "reliev[e] the federal courts of the overwhelming burden of business that intrinsically belongs to the state courts in order to keep them free for their distinctive federal business.") (internal citations omitted). Expanding diversity jurisdiction "would be destructive of the dignity and prestige of state courts, harmful to the federal courts, and disruptive of federal-state relationships." American Law Institute, STUDY OF THE DIVISION OF JURISDICTION BETWEEN STATE AND FEDERAL COURTS, 103 (1969). State courts would suffer because "[t]he diversion of state law litigation to federal tribunals . . . retards the formation and development of state law." *Id.* at 99. *See also* Henry J. Friendly, FEDERAL JURISDICTION: A GENERAL VIEW, 143 (1970) (exercise of diversity jurisdiction "postpones an authoritative decision by the state courts"). Federal courts would also be harmed. Under *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 79 (1938), federal courts sitting in diversity are required to predict the decision of the highest state court, and thus must "exhaustively dissect each piece of evidence thought to cast light on what the highest state court would ultimately decide." Friendly, *supra*, at 142. Moreover, when federal courts decide cases arising under state law without the possibility of state review, "the state's judicial power is

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filings, it is important to recognize that: (i) all but one of these decisions (*Stromberg*) apply only to class actions; (ii) no court of appeals has clearly announced that § 1367 abrogates the complete diversity rule for plaintiffs; and (iii) diversity filings are affected by other factors, including the increase in the matter-in-controversy requirement in 1996.

less extensive than its legislative power," resulting in "an undesirable interference with state autonomy" ALI Study, *supra*, at 99.[35]

Petitioners acknowledge the "danger" that plaintiffs will "boot-strap into federal court controversies that lack diversity of citizenship." Pet. Br. 44. The United States, in contrast, assures the Court that there is "no cause for concern" if § 1367 is held to "erode the rule of *Strawbridge*." U.S. Br. 24. But there most certainly is cause for concern if the number of diversity cases in the federal courts is substantially increased. As noted above, diversity cases currently represent about 30 percent of non-prisoner civil actions filed in the federal courts, but this is *less than one percent* of the civil actions filed in state courts of general jurisdiction. Thus, for each one percent of state court civil actions that are diverted to federal court, the current diversity caseload of the federal courts will more than double.

The government's reasons for assuring the Court that there is no cause for concern are unconvincing. *First*, the government notes (U.S. Br. 24) that § 1367(b) would preserve *Strawbridge* in some circumstances. For example, it would not allow the joinder of a nondiverse defendant under Rule 20. This does not eliminate any cause for concern, however, because *Strawbridge* would not be preserved in

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[35] The Federal Courts Study Committee has not been alone in calling for the abolition or substantial reduction of diversity jurisdiction. *See, e.g., Long Range Plan for the Federal Courts*, 166 F.R.D. 49, 89-92 (1995) (recommending that Congress act to reduce the number of diversity cases because they require a "massive diversion" of federal judges from their "principal function" of adjudicating federal question cases); ALI, *supra*, at 99-100 (1969); Felix Frankfurter, *Distribution of Judicial Power Between United States and State Courts*, 13 CORNELL L.Q. 499, 521 (1928); Friendly, *supra*, at 149; David P. Currie, *The Federal Courts and the American Law Institute*, 36 U. CHI. L. REV. 1 (1968); Charles A. Wright, *Restructuring Federal Jurisdiction: The American Law Institute Proposals*, 26 WASH. & LEE L. REV. 185, 194 (1969).

other circumstances, *e.g.*, on the plaintiff's side it would substitute minimal for complete diversity.

Second, the government asserts (*id.*) that minimal rather than complete diversity is already permitted "on a much broader scale" in the class action context. It is hard to see how this can be so. It is true that class actions typically include many plaintiffs in a single action, but there are literally millions of nonclass actions in state court. In addition, diversity jurisdiction in class actions is limited by the rule of *Zahn*, which the government argues was also swept away by § 1367.

Third, the government notes (*id.* at 25) that the district court has discretion under § 1367(c) to decline to exercise supplemental jurisdiction in certain cases. But discretion under subsection (c) is limited, and frequently would not provide a basis for refusing to exercise supplemental jurisdiction in diversity actions. *See, e.g., Abbott Labs.*, 51 F.3d at 529 (holding that district court abused its discretion in declining to exercise supplemental jurisdiction). In short, if § 1367 is interpreted to loosen the jurisdictional requirements for diversity actions in federal court, there is substantial cause for concern.

CONCLUSION

The judgment of the court of appeals should be affirmed.

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APPENDIX

STATUTES AND RULES INVOLVED

1. Title 28, United States Code, provides in part:

§ 1367. Supplemental jurisdiction

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if--

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
(3) the district court has dismissed all claims over which it has original jurisdiction, or
(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

(e) As used in this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

§ 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

§ 1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between--
(1) citizens of different States;
(2) citizens of a State and citizens or subjects of a foreign state;
(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

For the purposes of this section, section 1335, and section 1441, an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $75,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this section and section 1441 of this title--

(1) a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insurer has been incorporated and of the State where it has its principal place of business; and

(2) the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent, and the legal representative of an infant or incompetent shall be deemed to be

a citizen only of the same State as the infant or incompetent.

(d) The word "States", as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 1441. Actions removable generally

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.

(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

(c) Whenever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters in which State law predominates.

(d) Any civil action brought in a State court against a foreign state as defined in section 1603(a) of this title may be removed by the foreign state to the district court of the United States for the district and division

embracing the place where such action is pending. Upon removal the action shall be tried by the court without jury. Where removal is based upon this subsection, the time limitations of section 1446(b) of this chapter may be enlarged at any time for cause shown.

(e)(1) Notwithstanding the provisions of subsection (b) of this section, a defendant in a civil action in a State court may remove the action to the district court of the United States for the district and division embracing the place where the action is pending if--

(A) the action could have been brought in a United States district court under section 1369 of this title; or

(B) the defendant is a party to an action which is or could have been brought, in whole or in part, under section 1369 in a United States district court and arises from the same accident as the action in State court, even if the action to be removed could not have been brought in a district court as an original matter.

The removal of an action under this subsection shall be made in accordance with section 1446 of this title, except that a notice of removal may also be filed before trial of the action in State court within 30 days after the date on which the defendant first becomes a party to an action under section 1369 in a United States district court that arises from the same accident as the action in State court, or at a later time with leave of the district court.

(2) Whenever an action is removed under this subsection and the district court to which it is removed or transferred under section 1407(j) has made a liability determination requiring further

proceedings as to damages, the district court shall remand the action to the State court from which it had been removed for the determination of damages, unless the court finds that, for the convenience of parties and witnesses and in the interest of justice, the action should be retained for the determination of damages.

(3) Any remand under paragraph (2) shall not be effective until 60 days after the district court has issued an order determining liability and has certified its intention to remand the removed action for the determination of damages. An appeal with respect to the liability determination of the district court may be taken during that 60-day period to the court of appeals with appellate jurisdiction over the district court. In the event a party files such an appeal, the remand shall not be effective until the appeal has been finally disposed of. Once the remand has become effective, the liability determination shall not be subject to further review by appeal or otherwise.

(4) Any decision under this subsection concerning remand for the determination of damages shall not be reviewable by appeal or otherwise.

(5) An action removed under this subsection shall be deemed to be an action under section 1369 and an action in which jurisdiction is based on section 1369 of this title for purposes of this section and sections 1407, 1697, and 1785 of this title.

(6) Nothing in this subsection shall restrict the authority of the district court to transfer or dismiss an action on the ground of inconvenient forum.

(f) The court to which a civil action is removed under this section is not precluded from hearing and determining any claim in such civil action because the State court

from which such civil action is removed did not have jurisdiction over that claim.

2. The Federal Rules of Civil Procedure provide in part:

Rule 14. Third-Party Practice

(a) **When Defendant May Bring in Third Party.** At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. The third-party plaintiff need not obtain leave to make the service if the third-party plaintiff files the third-party complaint not later than 10 days after serving the original answer. Otherwise the third-party plaintiff must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make any defenses to the third-party plaintiff's claim as provided in Rule 12 and any counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert any defenses as provided in Rule 12 and any counterclaims and cross-claims as provided in Rule 13. Any party may move

to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant. The third-party complaint, if within the admiralty and maritime jurisdiction, may be in rem against a vessel, cargo, or other property subject to admiralty or maritime process in rem, in which case references in this rule to the summons include the warrant of arrest, and references to the third-party plaintiff or defendant include, where appropriate, a person who asserts a right under Supplemental Rule C(6)(b)(i) in the property arrested.

(b) **When Plaintiff May Bring in Third Party.** When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.

(c) **Admiralty and Maritime Claims.** When a plaintiff asserts an admiralty or maritime claim within the meaning of Rule 9(h), the defendant or person who asserts a right under Supplemental Rule C(6)(b)(i), as a third-party plaintiff, may bring in a third-party defendant who may be wholly or partly liable, either to the plaintiff or to the third-party plaintiff, by way of remedy over, contribution, or otherwise on account of the same transaction, occurrence, or series of transactions or occurrences. In such a case the third-party plaintiff may also demand judgment against the third-party defendant in favor of the plaintiff, in which event the third-party defendant shall make any defenses to the claim of the plaintiff as well as to that of the third-party plaintiff in the manner provided in Rule 12 and the action shall proceed as if the plaintiff

had commenced it against the third-party defendant as well as the third-party plaintiff.

Rule 19. Joinder of Persons Needed for Just Adjudication

(a) **Persons to be Joined if Feasible.** A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action.

(b) **Determination by Court Whenever Joinder not Feasible.** If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by

protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) **Pleading Reasons for Nonjoinder.** A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as prescribed in subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.

(d) **Exception of Class Actions.** This rule is subject to the provisions of Rule 23.

Rule 20. Permissive Joinder of Parties

(a) **Permissive Joinder.** All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons (and any vessel, cargo or other property subject to admiralty process in rem) may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) **Separate Trials.** The court may make such orders as will prevent a party from being embarrassed, delayed,

or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.

Rule 24. Intervention

(a) **Intervention of Right.** Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) **Permissive Intervention.** Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) **Procedure.** A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor

and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute of the United States gives a right to intervene. When the constitutionality of an act of Congress affecting the public interest is drawn in question in any action in which the United States or an officer, agency, or employee thereof is not a party, the court shall notify the Attorney General of the United States as provided in Title 28, U.S.C. § 2403. When the constitutionality of any statute of a State affecting the public interest is drawn in question in any action in which that State or any agency, officer, or employee thereof is not a party, the court shall notify the attorney general of the State as provided in Title 28, U.S.C. § 2403. A party challenging the constitutionality of legislation should call the attention of the court to its consequential duty, but failure to do so is not a waiver of any constitutional right otherwise timely asserted.

(8)

Supreme Court, U.S.
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No. 04-79

IN THE

Supreme Court of the United States

MARIA DEL ROSARIO ORTEGA, SERGIO BLANCO, by themselves and representing minors BEATRIZ BLANCO-ORTEGA AND PATRIZIA BLANCO-ORTEGA,

Petitioners,

v.

STAR-KIST FOODS, INC.,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the First Circuit

REPLY BRIEF

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REPLY BRIEF

Respondent has failed to seriously contest Petitioners' showing that the district court's supplemental jurisdiction over their claims follows necessarily from the words of 28 U.S.C. § 1367.[1]

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[1] Respondent raises (Br. at 1-2) for the first time in this case the suggestion that the federal courts may be without diversity jurisdiction over this entire action because the complaint names fictitious insurance-company defendants, J.A. 10, 32, who have been neither identified to the district court nor served with process.

But there is no reason to expect that the identity of these parties should have been resolved by now. The trial-court proceedings to date have been largely confined to motions to dismiss on other jurisdictional grounds and some limited discovery, and Respondent never raised the issue of the court's jurisdiction over the fictitious parties. *See* 14 Charles A. Wright et al., *Federal Practice and Procedure* § 3642 at 192 (3d ed. 1998) (jurisdiction over fictitious defendants must be established "on challenge"); *Ward v. Connor*, 495 F. Supp. 434, 438-39 (E.D. Va. 1980) (postponing determination of jurisdiction until citizenship of served Doe defendants could be determined), *rev'd on other grounds*, 657 F.2d 45 (4th Cir. 1981); 28 U.S.C. § 1441 (citizenship of fictitious-name defendants "shall be disregarded" for purposes of removal jurisdiction). Having not been raised previously, this issue should not now occupy the attention of this Court.

Should the Court nonetheless wish to consider this issue, it is clear that none of Respondent's insurance carriers are citizens of Puerto Rico under 28 U.S.C. § 1332(c)(1), which provides that corporate citizenship exists at both the corporation's place of incorporation and its principal place of business. Based on information provided by Respondent in response to an interrogatory, the insurers and their places of incorporation are as follows: Liberty Mutual Insurance Co. - Massachusetts; Federal Insurance Co. - Indiana; National Union Fire Insurance Co. - Pennsylvania; Allianz Global Risks U.S. Insurance Co. - California (parent company Allianz Aktiengesellschaft incorporated in Germany); American Guarantee & Liability Insurance Co. - New York (ultimate parent company Zurich Insurance Co. incorporated in Switzerland). Public records establish that none of these companies has Puerto Rico as its principal place of business. *See* 13B Wright, *supra*, § 3625 at 637-39, 642.

Finally, should the Court have any remaining doubts arising from the presence of the fictitious defendants, those doubts can be resolved by dismissing the insurers from the case at this time. *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 827 (1989). Such a course would plainly be proper, since the insurers certainly are not "indispensable to the suit," and their presence does not

Section 1367(a)'s affirmative grant of supplemental jurisdiction is triggered by the existence of a "civil action of which the district courts have original jurisdiction." Clearly, the district court had jurisdiction under § 1332 over the claims of Beatriz Blanco-Ortega. Section 1367(a) thus confers jurisdiction over "all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy." The claims of Beatriz's family members arise from the same incident as Beatriz's claims, and thus come within § 1367(a)'s grant of supplemental jurisdiction.

The language of § 1367(b), which creates specific exceptions, applicable in diversity cases, to § 1367(a)'s affirmative grant of jurisdiction, on its face has no application to this case. Indeed, neither Star-Kist nor Exxon, the petitioner in Case No. 04-70, even advances an argument that, if the affirmative grant of § 1367(a) is triggered, the limiting provisions of § 1367(b) render that jurisdiction inapplicable to the claims at issue in either of the consolidated cases. It is therefore clear from the statute and the arguments advanced by the parties that the outcome in No. 04-79 turns upon the meaning given to the first sentence of § 1367(a).[2]

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provide any party "with a tactical advantage." *Id.* at 838; *see also Howell ex rel. Goerdt v. Tribune Entm't Co.*, 106 F.3d 215, 218 (7th Cir. 1997). If the Court deems it necessary in order to retain jurisdiction, Petitioners, for themselves and as representatives of Beatriz, hereby ask the Court to enter such an order.

[2] Exxon's first submission of grounds for reversal in No. 04-70 includes a number of contentions resting peculiarly on the class-action nature of that action. Exxon Br. at 17-20. Those contentions are wholly inapplicable in No. 04-79. Similarly, the likely impending enactment of the Class Action Fairness Act of 2005 would have no effect upon the proper analysis of § 1367 and § 1332 in the context of this case. That legislation would create additional federal-court jurisdiction under § 1332 only over large class actions (and mass actions) defined in terms of aggregated amount in controversy and number of plaintiffs. It does not purport to amend § 1367,

A. Respondent and Exxon's Interpretation of § 1367 Depends Upon An Impossible Reading of The First Sentence of § 1367(a)

The central question in this case is whether "original jurisdiction" over a "civil action" exists based on a complaint where the parties are completely diverse and some plaintiffs but not others satisfy § 1332's amount-in-controversy requirement. If it does, then § 1367(a)'s grant of supplemental jurisdiction over related claims, like those at issue here, is triggered. The essential—and incorrect—assertion of both Star-Kist (Br. at 14, 26) and Exxon (Br. at 22-23) is that such original jurisdiction over the case as a whole is destroyed where all plaintiffs and defendants are diverse but only some of the plaintiffs bring claims meeting the amount-in-controversy requirement.

This Court has recently rejected the contention that there is no "original jurisdiction" over a "civil action," within the meaning of § 1367(a), whenever a case includes some claims over which original jurisdiction is lacking. As the Court noted in *City of Chicago v. International College of Surgeons*, 522 U.S. 156, 167 (1997), "[t]he whole point of supplemental jurisdiction is to allow the district courts to exercise pendent jurisdiction over claims as to which original jurisdiction is lacking." Presented with a complaint that raised both federal-question claims and claims arising under state law, the Court thus found "original jurisdiction" over the "action," as required in § 1367(a), even absent "original jurisdiction" over the state-law claims. *Id.*

Unable to dispute the holding of *City of Chicago*, Respondent and Exxon draw a sharp but indefensible distinction between federal-question and diversity cases.

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and there is no incongruity between its provisions and the interpretation of § 1367 advocated here.

Star-Kist Br. at 21-23; Exxon Br. at 23. They admit "that a district court has original jurisdiction in a civil action under 28 U.S.C. § 1331 if the action presents at least one claim that arises under the Constitution or laws of the United States," even if the suit contains other claims for which there is no jurisdictional basis. Star-Kist Br. at 22; *accord* Exxon Br. at 22. Yet, they argue that original jurisdiction in a diversity case is destroyed if even a single plaintiff fails to satisfy the full requirements—including the amount-in-controversy requirement—of § 1332. As Exxon puts it, "at the moment those noncompliant plaintiffs are added, the court's 'original jurisdiction' ceases, which deprives the court of the jurisdictional predicate for the exercise of supplemental jurisdiction." Exxon Br. at 23.

This is the central fallacy of Star-Kist and Exxon's position. While it is true, under the complete diversity requirement of *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806), that the presence of a single non-diverse plaintiff will destroy § 1332 jurisdiction over the case as a whole, *see* Petr. Br. at 24-25; Star-Kist Br. at 22-23; Exxon Br. at 23, no similar result follows just because the claims of some diverse plaintiffs fall below the required amount in controversy. Indeed, while numerous cases clearly hold that jurisdiction is destroyed if any non-diverse plaintiff or defendant is joined, not one case remotely suggests that the same result follows from the presence of one plaintiff's undersized claim if there is complete diversity and at least one plaintiff satisfies the jurisdictional amount.

This Court's decisions are legion which reiterate the complete-diversity requirement, and spell out the consequence that, in the absence of complete diversity between plaintiffs and defendants, the district court has no jurisdiction over any part of the case. *See, e.g., Wisc. Dep't of Corrections v. Schacht*, 524 U.S. 381, 389 (1998) (in a diversity case, "one claim against one nondiverse defendant destroys [the] original jurisdiction"); *Peninsular Iron Co. v.*

Stone, 121 U.S. 631, 632-33 (1887); *Corp. of New Orleans v. Winter*, 14 U.S. (1 Wheat.) 91, 94-95 (1816).[3]

This outcome follows from the reasons behind Congress's decision to confer federal-court jurisdiction in the first place. As contrasted with federal question jurisdiction, in a diversity case, the justification for federal-court jurisdiction rests not on the character of the issues in the case, but on the particular array of parties. Diversity jurisdiction "had its origin in fears of local hostilities" and a resulting concern about the possibility of unfair treatment of out-of-state parties at the hands of state courts. Henry J. Friendly, *The Historic Basis of Diversity Jurisdiction*, 41 Harv. L. Rev. 483, 510 (1928). As best one can tell, the complete-diversity requirement embodies a judgment that the concerns that justify jurisdiction are markedly diminished when citizens of the host state appear on both sides of a dispute. *See* David P. Currie, *The Federal Courts and the American Law Institute*, 36 U. Chi. L. Rev. 1, 18 (1968).

The amount-in-controversy requirement, by contrast, does not reflect any affirmative rationale directing § 1332 cases to the federal courts, but rather merely reflects a judgment about the minimum size of disputes that should command the courts' attention. *See* 15 James Wm. Moore, *Moore's Federal Practice* § 102.100, at 102-165 (3d ed. 2004); Friendly, *supra*, 41 Harv. L. Rev. at 499-504. Indeed, this statutory limitation appeared, until 1980, in the federal-question statute as well. As a result, there is no authority for the essential proposition of Respondent, Exxon, and the court below that, "just as with the complete diversity requirement, if a single party fails to meet the matter-in-controversy requirement, . . . the district court lacks 'original

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[3] Clearly the complete diversity requirement remains a limitation upon original jurisdiction under § 1332, since § 1367, in creating supplemental jurisdiction, did not amend § 1332 in any way.

jurisdiction of [the] civil action.'" Star-Kist Br. at 23. While plaintiffs with separate and distinct claims must, to satisfy § 1332, each satisfy the jurisdictional-amount requirement, and may not do so by aggregating their claims with those of other plaintiffs, *Snyder v. Harris*, 394 U.S. 332, 336 (1969); *Troy Bank v. G.A. Whitehead & Co.*, 222 U.S. 39, 40-41 (1911), the consequence of joining a plaintiff who fails to do so is simply (absent supplemental jurisdiction) his dismissal from the case, not dismissal of the entire civil action.

This was made explicit at several points in this Court's opinion in *Zahn v. International Paper*, 414 U.S. 291 (1973). After reiterating the established rule against aggregation of different parties' claims to satisfy the jurisdictional amount, the Court stated the consequences that flow from the failure of any one plaintiff to meet the jurisdictional amount:

> This rule plainly mandates not only that there may be no aggregation and that the entire case must be dismissed where none of the plaintiffs claims more than $10,000 but also requires that *any plaintiff without the jurisdictional amount must be dismissed from the case*, even though others allege jurisdictionally sufficient claims.

Id. at 300 (emphasis added); *see also id.* at 295, 301. In support of this action, the Court in *Zahn* cited several other decisions of this Court which similarly treated amount-in-controversy requirements in a variety of jurisdictional statutes as grounds for dismissing the claims of those who failed to meet them, but not for dismissing the action as a whole. *See Clark v. Paul Gray, Inc.*, 306 U.S. 583 (1939) (federal-question statute); *Stewart v. Dunham*, 115 U.S. 61 (1885) (appellate-jurisdiction statute); *Snyder v. Harris*, 394 U.S. 332 (1969) (diversity statute).

Respondent's glib response to this consistent practice of dismissing only those parties whose claims fall below the required amount-in-controversy is to assert that this practice is indistinguishable from what occurs where parties who destroy complete diversity are present. Resp. Br. at 33-34;

see Newman-Green, 490 U.S. at 827. But there are two reasons why this is not true. First, while numerous cases over two centuries hold that diversity jurisdiction over the entire case is destroyed by the presence of a single non-diverse party, not one decision reaches the same conclusion because some diverse plaintiffs have claims falling below the jurisdictional amount. Second, this Court's decisions make clear that, while the power to restore diversity jurisdiction by dismissal of non-diverse parties is carefully cabined by considerations of timing and discretion, dismissal of parties who lack the amount-in-controversy is utterly routine.

Thus, while the Court has held that a district court may establish jurisdiction by dismissing non-diverse parties from a removed case prior to entry of judgment, *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 70-78 (1996), it has also held that such a dismissal of the non-diverse party is ineffective to restore jurisdiction after entry of judgment, *Am. Fire & Cas. Co. v. Finn*, 341 U.S. 6, 17-18 (1951). And it has ruled that the courts of appeals have the power to restore jurisdiction by dismissing a dispensable non-diverse party, but emphasized that "such authority should be exercised sparingly," based on careful consideration of "whether the dismissal of a nondiverse party will prejudice any of the parties in the litigation." *Newman-Green*, 490 U.S. at 837-38.

By contrast, not one case involving dismissal of individual parties who fail to meet the jurisdictional amount includes conditions like these or suggests that jurisdiction over the case as a whole is in any way implicated by the presence of such parties. *See, e.g.*, *Zahn*, 414 U.S. at 295, 300; *Clark*, 306 U.S. at 590. Because claims of diverse plaintiffs failing the amount-in-controversy requirement of § 1332 do not undermine the court's diversity jurisdiction over the rest of the case, they may fall within the supplemental jurisdiction created by § 1367(a), unless excepted by § 1367(b).

B. Respondent's Tortured Reading of § 1367(a) Cannot Be Justified As Necessary In Order For § 1367(b) To "Make Sense"

Respondent rests its claim to prevail in this case entirely upon its purported reading of the first sentence of § 1367(a). If that is rejected, and this Court finds that the first requirement of § 1367(a) is satisfied here by the existence of a "civil action" within the district court's jurisdiction under § 1332, Respondent has no other argument that could defeat the application of supplemental jurisdiction over Petitioners' claims in this case. In particular, Respondent makes no claim (nor does Exxon) that the exercise of supplemental jurisdiction is in any event foreclosed by the provisions of § 1367(b), whose specific exceptions to the exercise of supplemental jurisdiction in diversity cases do not include claims by plaintiffs joined under Rule 20.

While Respondent thus does not rely directly on § 1367(b)'s exceptions as a ground upon which it can prevail, it does assert a more oblique relevance of that provision to this case. In essence, Respondent claims that the Court should adopt its unsupportable reading of § 1367(a) because under that reading, "subsection (b) makes sense," Resp. Br. at 26, and failing to adopt that reading leads to three particular "absurd results," *id.* at 30.

In fact, Respondent does not really appear to believe that subsection (b) makes much sense, noting as it does that the section is "not a model of clarity," *id.* at 24, and acknowledging that under its own interpretation of section 1367(a), "subsection (b) is not without its difficulties," *id.* at 27. Beyond that, Respondent's discussion ostensibly showing that subsection (b) "makes sense" when subsection (a) is read as Respondent advocates, Resp. Br. at 24-30, is really nothing more than a six-page summary of some of the provisions of § 1367(b) that does nothing to show that Respondent's reading of § 1367(a) is correct. Respondent's account of subsection (b) is accurate in all but a few critical

respects, and in fact is similar—except in those respects—to a parallel discussion that appears in Petitioners' opening brief, at 29-34.[4] Respondent's discussion, like Petitioners', shows that Congress in § 1367 codified, and at times modified, pre-existing principles of pendent and ancillary jurisdiction. *See* Petr. Br. at 5-9, 43-45. That fact is simply no help in resolving the issue before this Court—whether the jurisdiction conferred in § 1367 reaches the claims which this Court found in *Clark* and *Zahn* to be outside the federal court's jurisdiction as it existed previously.

In a separate and much shorter section, Respondent argues that its reading of § 1367(a) is necessary to prevent

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[4] Thus, for example, Petitioners have no dispute with Respondent's description of the Court's ruling in *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365 (1978), and both parties agree that it is preserved under § 1367. Resp. Br. at 26; Petr. Br. at 30-32. Respondent also accurately observes that the enumerated exceptions in subsection (b) make no reference to claims by plaintiffs joined under Rule 20, and correctly suggests that any resulting incongruity should be avoided by requiring dismissal of those cases where the permissive joinder of additional plaintiffs under Rule 20 destroys the district court's jurisdiction over the civil action, such that the threshold requirement of § 1367(a) is not satisfied. Resp. Br. at 27; Petr. Br. at 31-33 & n.15. Respondent also notes correctly that § 1367(b)'s enumerated exceptions include claims by plaintiffs seeking to intervene under Rule 24 (as well as Rule 19), even though before the statute's enactment the claims of plaintiffs intervening under Rule 24(a) had been allowed. Resp. Br. at 27; Petr. Br. at 32. Finally, Respondent correctly asserts that subsection (b) in no way limits supplemental jurisdiction over claims of defendants "haled into court against their will," even as it does expressly limit claims by plaintiffs against these parties. Resp. Br. at 28-29; Petr. Br. at 29-30.

Of course the parties do not agree upon the central question at issue in this case—whether original jurisdiction under § 1332 exists and § 1367(a) is therefore triggered—where there is complete diversity between plaintiffs and defendants and some but not all plaintiffs satisfy the amount-in-controversy requirement. Nor do they agree as to the proper interpretation of the final clause of § 1367(b), which denies supplemental jurisdiction over the excepted claims enumerated there "when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332." Resp. Br. at 29 & n.18; Petr. Br. at 26-29; *see also infra* pp. 11-13.

subsection (b) from producing certain "absurd results." Resp. Br. at 30-32. Specifically, Star-Kist asserts that "§ 1367(b) undeniably prohibits the exercise of supplemental jurisdiction in circumstances in which strong arguments can be made that it should be allowed," and notes that subsection (b)'s exclusions from supplemental jurisdiction apply to proposed claimants under Rules 19 and 24, who may at times be indispensable parties, but not to plaintiffs who are joined permissively under Rule 20. *Id.* at 30-31. Respondent seems to suggest here that subsection (b) makes so little sense in these certain respects that § 1367(a) must be read very narrowly to minimize the occasions on which these incongruous provisions come into play. Respondent also argues that its construction of § 1367(a) is critical, because "if section 1367 permits the permissive joinder of plaintiffs who cannot meet the amount-in-controversy requirement, then it also permits the joinder of non-diverse plaintiffs," with the effect of overturning the complete diversity requirement and "authoriz[ing] a potentially huge expansion of the federal docket." *Id.* at 31-32 (quoting Pet. App. 27a); *see also* Resp. Br. at 32-35.

None of these supposedly absurd consequences follow from Petitioners' reading of the statute. Taking the last argument first, Petitioner has demonstrated that the natural reading of § 1367 does not undermine the requirement of complete diversity as it has existed previously. First, where non-diverse plaintiffs or defendants are present in a case as filed, there is no original jurisdiction over any part of the case, and supplemental jurisdiction is not triggered at all. Petr. Br. at 24-25. Second, where complete diversity is present in the complaint as filed, that fact need not create a "gaping hole" by which existing plaintiffs are allowed to amend their complaint to add non-diverse plaintiffs pursuant to Rule 20. Petr. Br. at 32-33 n.15. Rather, any complaint permissively amended and filed by the original plaintiffs in the case must satisfy the threshold requirements of § 1367(a), just as the first complaint was. *See id.* Thus if the original,

diverse plaintiffs in a case sought to file an amended complaint naming an additional plaintiff who is non-diverse, that amended complaint would fail the test of original jurisdiction, and supplemental jurisdiction would thus not be triggered.[5]

Any remaining perceived incongruities arising from the fact that subsection (b) makes no reference to claims by plaintiffs joined under Rule 20, while excepting a broad range of other claims, disappear when the final clause of subsection (b) is correctly understood. Placed at the end of that enumerated list of exceptions, that clause defines when supplemental jurisdiction over the enumerated claims is foreclosed—"when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332."

As discussed in Petitioners' opening brief, at 26-29, this clause is susceptible to two alternative readings. Under the reading that is assumed by Respondent, Br. at 29 & n.18, the reference to the exercise of supplemental jurisdiction being "inconsistent with" the jurisdictional requirements of § 1332 is just another way of saying there can only be supplemental jurisdiction over the enumerated claims if all of the requirements of § 1332 are already satisfied as to those claims. Thus, in essence, supplemental jurisdiction exists over these claims in precisely those cases—and only those cases—where it is completely pointless because original jurisdiction already exists over them under § 1332.

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[5] Ironically, it appears that Respondent is in basic agreement with Petitioners concerning how this supposed "gaping hole" problem should be addressed, in that "additional parties permissibly joined as plaintiffs under Rule 20" should, if non-diverse, be found to destroy original jurisdiction and, therefore, any basis for supplemental jurisdiction. Resp. Br. at 27. Of course, Respondent also erroneously claims that such original jurisdiction is also destroyed by the addition of a new, diverse Rule 20 plaintiff whose claim falls short of the jurisdictional amount.

There are strong reasons to reject this interpretation. In a statute whose entire purpose is to codify a grant of jurisdiction supplemental to—that is going beyond—the pre-existing legislative grants of original jurisdiction, it would be strange in the extreme for the statute to talk about that supplemental jurisdiction existing only where original jurisdiction already exists. Moreover, this reading renders the entire last clause of § 1367(b) superfluous, since a statement that supplemental jurisdiction only exists over certain claims where § 1332 jurisdiction already exists, is no different in its effect from a statement that there is no supplemental jurisdiction over those claims. The resulting categorical denial of supplemental jurisdiction over the enumerated claims is entirely responsible for the specific incongruities alleged by Respondent between the treatment of Rule 20 plaintiffs, who can invoke the supplemental jurisdiction, and of other plaintiffs who cannot because their claims are referenced in subsection (b).

The statute makes a great deal more sense, and all of the objections to the preceding interpretation are overcome, when supplemental jurisdiction over the enumerated claims is foreclosed as "inconsistent with the jurisdictional requirements of section 1332" only where their joinder would actually destroy the jurisdictional basis on which the case found its way to federal court in the first place. Since § 1367(b) only applies to cases where original jurisdiction rests solely on § 1332, the only way for that basis of jurisdiction to be entirely defeated is by the addition of a party who destroys complete diversity. Thus adding a non-diverse plaintiff or defendant is "inconsistent with the jurisdictional requirements of section 1332," because it destroys the complete diversity that is essential to *any* jurisdiction under § 1332. At the same time, allowing supplemental jurisdiction over a plaintiff whose claims fall below the jurisdictional amount does not undermine the diversity basis for the court's original jurisdiction. Thus the

grant of supplemental jurisdiction remains applicable in the latter instance but not in the former.

When read in this way, subsection (b) becomes a limit upon—but not a complete abnegation of—the grant of supplemental jurisdiction over the enumerated classes of claims in diversity cases. It also loses its strange character as a statement that supplemental jurisdiction exists over the enumerated claims only where that jurisdiction is unnecessary because original jurisdiction under § 1332 already exists over those claims. Thus, subsection (b) ceases to be an incredibly indirect way of making a very simple point—that there is simply no supplemental jurisdiction over the claims enumerated there. Also, the final "inconsistent with" clause ceases to be entirely superfluous.

Last but not least, the correct reading of § 1367(b)'s final clause resolves any perceived incongruities between claims by plaintiffs added under Rule 20, which are omitted from the list of excepted claims, and other plaintiffs' claims, which appear on that list. That is because, for claims within the enumerated exceptions, supplemental jurisdiction is foreclosed not in all cases, but only where the addition of such claims would destroy complete diversity and thus foreclose § 1332 jurisdiction over any part of the case. Where claims enumerated in subsection (b) are merely below the jurisdictional amount, and thus are not inconsistent with the federal-court jurisdiction over the case as a whole, subsection (a)'s grant of supplemental jurisdiction remains available. Section 1367(b) thus does not simply deny the existence of any supplemental jurisdiction over the listed claims, but rather says only that such claims may not be brought if they destroy complete diversity—the *sine qua non* of any federal jurisdiction under § 1332. As a result, the perceived discrepancy between the treatment of claims by plaintiffs joined under Rule 20, and claims by other plaintiffs included in the enumerated exceptions, simply disappears.

C. The Legislative History of § 1367 Offers No Basis for Reading The Statute In A Manner Contrary To Its Words

The lengthy discussions of legislative history offered by Respondent (Br. at 36-42) and Exxon (Br. at 34-40) should be rejected, both because the language of the first sentence of § 1367(a) is quite clear, *see Dep't of Hous. & Urban Dev. v. Rucker*, 535 U.S. 125, 132 (2002); *BedRoc Ltd. v. United States*, 124 S. Ct 1587, 1595 n.8 (2004), and because the legislative history does not support any reasonable inference that the statute as enacted was intended to confine the grant of supplemental jurisdiction as Respondent contends. To the contrary, when one tracks the evolution of proposed statutory language through the legislative process, there is no reason to question the meaning that is clear on the statute's face.

The Subcommittee to the Federal Courts Study Committee proposed the first draft of what was to become §1367(a) in the following language:

> (a) Except as provided in subsections (b) and (c) or in another provision of this Title, in any civil action on a claim for which jurisdiction is provided, the district court shall have jurisdiction over all other claims arising out of the same transaction or occurrence, including claims that require joinder of additional parties

Report to the Federal Courts Study Comm. of the Subcomm. on the Role of the Federal Courts and Their Relation to the States 567 (1990), *reprinted in* 1 Federal Courts Study Comm., *Working Papers and Subcommittee Reports* (1990). At the same time, the Subcommittee recommended that the complete-diversity requirement "should be preserved," *id.* at 566, and proposed in subsection (b) specific exceptions to the availability of supplemental jurisdiction in diversity

cases.[6] It also stated its unequivocal intention to overrule the Supreme Court's decision in *Zahn*, which it said, "[f]rom a policy standpoint, . . . makes little sense." *Id.* at 561 n.33.

The full Study Committee proposed no specific language and did not expressly incorporate the Subcommittee's recommendations into its final Report. But it did recommend, in the event that its proposal to abolish diversity jurisdiction were not followed, that Congress enact a version of supplemental jurisdiction similar to what the Subcommittee had in mind. Fed. Courts Study Comm., *Report of the Federal Courts Study Committee* 47 (1990).

In the initial draft of the legislation considered in the House, H.R. 5381, 101st Cong. (1990), the section addressing supplemental jurisdiction, § 120, looked far different from the Subcommittee's proposal. *See* Addendum at 1a-2a. But while presented in different words and format, § 120 was not greatly dissimilar to the Subcommittee proposal in its consequences. In particular, it also effectively overturned *Zahn* and *Clark*, and generally preserved the complete-diversity requirement in most contexts in which it had applied in the decisions of this Court. Section 120 did not, however, preserve the complete-diversity requirement in the context of this Court's *Kroger* decision, because it allowed supplemental jurisdiction over claims by an "original plaintiff" against a non-diverse party brought into the action "by a party or person other than the plaintiff." Add. at 1a.

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[6] As proposed by the Subcommittee subsection (b) provided:

> (b) In civil actions under § 1332 of this Title, jurisdiction shall not extend to claims by the plaintiff against parties joined under Rules 14 and 19 of the Federal Rules of Civil Procedure, or to claims by parties who intervene under Rule 24(b) of the Federal Rules of Civil Procedure, *provided*, that the court may hear such claims if necessary to prevent substantial prejudice to a party or third party.

Judge Weis, Chairman of the Study Committee, objected in testimony to § 120's abrogation of the rule in *Kroger*. *Hearings on H.R. 5381 and H.R. 3898 Before the Subcomm. on Courts, Intellectual Property, and the Administration of Justice of the House Comm. on the Judiciary*, 101st Cong. 94-95 (1990) [hereinafter *Hearings*]. He did not refer to or question the proposal's treatment of the amount-in-controversy requirement—*i.e.*, its abrogation of *Zahn* and *Clark*. To the contrary, Judge Weis submitted to Congress proposed language to be used in place of § 120, which was substantively indistinguishable from the original subcommittee language of subsection (a) on the question at issue here:

> (a) Except as provided in subsections (b) and (c) or in another section of this title, in any civil action on a claim for which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims arising out of the same transaction or occurrence, or series of transactions or occurrences, including claims that require joinder or intervention of additional parties.

Id. at 98. It is clear—and must likewise have been clear to Judge Weis at the time—that this proposed language, like the version proposed by the Subcommittee, created an affirmative grant of supplemental jurisdiction over claims falling below the jurisdictional amount. At the same time, Judge Weis submitted a proposed revision of subsection (b)[7]

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[7] Judge Weis's proposed subsection (b) reads as follows:

> (b) In any civil action of which the district courts have original jurisdiction under section 1332 of this title, the district courts shall not have supplemental jurisdiction over claims by the plaintiff against persons joined under Rules 14 and 19 of the Federal Rules of Civil Procedure, or over claims by persons seeking to intervene under Rule 24 of the Federal Rules of Civil Procedure, when exercising supplemental jurisdiction over such claims would be inconsistent with the complete diversity requirement

that preserved *Kroger* and addressed in specific terms the preservation of the complete-diversity requirement. The House Subcommittee adopted this proposed language as its working draft. With relatively limited further revisions, the language proposed by Judge Weis became the text of §1367(a) and (b) as enacted. *See* Petr. Br. at 1-2.

Respondent correctly summarizes but wrongly draws inferences from two particular modifications that Congress made to the version offered by Judge Weis:

> *First,* the subcommittee changed the phrase "in any civil action *on a claim* for which the district courts have original jurisdiction" to "in any civil action of which the district courts have original jurisdiction." . . . *Second,* the new provision expanded the exceptions to exercising supplemental jurisdiction in diversity cases by prohibiting its use in cases where it would be inconsistent with the "the *jurisdictional* requirements"—not just the "*complete diversity* requirement"—of §1332.

Resp. Br. at 39-40. Respondent suggests that the first revision—of subsection (a)—establishes that each and every claim must satisfy the requirements for original jurisdiction before supplemental jurisdiction can attach. *Id.* at 40. But nothing in the Hearings, Study Committee or House Report supports this supposition, and the House Report is directly contrary. It states that subsection (a) "authorizes the district court to exercise jurisdiction over a supplemental claim whenever it forms part of the same constitutional case or controversy as the claim or claims that provide the basis of the district court's original jurisdiction." H.R. Rep. No. 101-734, at 28-29 (1990). Of course, Respondent's reading is also at odds with this Court's decision in *City of Chicago*, 522 U.S. at 167. *See supra* p. 3.

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of section 1332.

Respondent also argues that the second change—to the last clause of subsection (b)—had the effect of "preserv[ing] both the matter-in-controversy requirement and the complete diversity requirement of § 1332." Resp. Br. at 40. But Respondent makes no effort to explain, as it must, how words in subsection (b) can alter the clear meaning of subsection (a). In any event, Respondent's reading of the last clause of § 1367(b) is unsound, *supra* pp.11-13, and nothing in the legislative history suggests that it should be followed.[6] To the contrary, there is evidence of an entirely different explanation for the change in the last clause of subsection (b)—to avoid "lock[ing] in the complete diversity requirement for alienage cases"—an issue that in 1990 had not, and has yet to be, resolved by this Court. Petr. Brief at 28-29 & n.13.

Ultimately, the legislative history arguments offered by Respondent and Exxon are efforts to avoid what is apparent from the face of the statute as well as from its legislative history—that Congress's clear intent was to provide a "practical arena for the resolution of an entire controversy," H.R. Rep. No. 101-734, at 28, at least where "Congress ha[s] a legitimate concern with seeing that the litigation in all its phases is resolved at one point." *Hearings*, *supra*, at 87. The joinder of diverse plaintiffs with injuries from the same constitutional case or controversy, regardless of the amount of their supplemental claims, falls well within this purpose as well as the statute's language.

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[6] Neither the Reports nor the Hearings contain reference to the amount-in-controversy requirement for supplemental claims outside the class-action context. The fragment of legislative history referring to *Zahn* should be ignored in both consolidated cases for reasons set forth previously. Petr. Br. at 49; *see also* Richard D. Freer, *The Cauldron Boils: Supplemental Jurisdiction, Amount in Controversy, and Diversity of Citizenship Class Actions*, 53 Emory L.J. 55, 56-58 (2004).

D. Respondent's "Floodgates" Argument Is Factually Wrong And Legally Irrelevant

Finally, Respondent argues (Br. at 42-47) that its reading of § 1367 is needed to prevent the federal docket from being overwhelmed by diversity cases. But Respondent makes no showing that Petitioners' reading would lead to any significant increase in federal diversity filings.

Respondent's statistical discussion (Br. at 43-44), estimating the number and proportion of federal diversity cases, and then contrasting those numbers with the much larger number of civil cases filed in state courts, shows no risk of significant increase in the number of diversity filings. The vast majority of civil actions in state court do not involve any parties of diverse citizenship and thus cannot be brought in federal court under any reading of § 1367. Moreover, Respondent makes no effort to explain how Petitioners' reading of the statute would noticeably expand the federal diversity docket, but merely speculates that "*[i]f*" Petitioners' reading "divert[ed] even a small percentage" of state civil actions into federal courts, "the federal judicial system could easily be overwhelmed." Br. at 44 (emphasis added).

In fact, § 1367 does not, on Petitioners' reading, grant federal jurisdiction over *any* diversity cases that could not have been brought in federal court in the absence of § 1367. Jurisdiction under § 1367 involves the mere addition of *claims* in cases that are already properly within the federal jurisdiction. Thus, its effect is not to increase the number of cases but only to expand the number of related claims that may be heard.

Respondent admits that the appellate decisions contrary to its position "do not appear to have been followed by huge increases in diversity filings." Resp. Br. at 44-45 n.34. As explanation, it notes that only *Stromberg* squarely adopted Petitioners' reading in the non-class context. *Id.* But Respondent also finds no surge in federal diversity filings in

the Seventh Circuit after *Stromberg*, or in *any* of the nine regional circuits where the issue remains open and litigants remain free to assert jurisdiction under the more expansive reading of § 1367.

In reality, considerations of judicial efficiency and avoidance of burdens on the courts argue strongly for Petitioners' position and against Respondent's. In addition to the obvious multiplication of suits that results from litigating small, related claims of diverse parties in state court separate from a pending diversity case, such a course often produces a host of pesky procedural issues related to the interaction of the two suits. *See, e.g., Acevedo-Garcia v. Monroig*, 351 F.3d 547, 573 (1st Cir. 2003) (noting that offensive, non-mutual collateral estoppel has "historically spawned the greatest misgivings among jurists").

Finally, Petitioners' reading does not "raise serious federalism concerns." Resp. Br. at 45. The concern about federal courts deciding cases "that intrinsically belong[] to the state courts," *City of Indianapolis v. Chase Nat'l Bank*, 314 U.S. 63, 76 (1941), is not implicated by allowing smaller diverse claims arising from the same controversy to be resolved with claims that have a clear federal jurisdictional basis under § 1332. Such actions involve one of the core areas of federal judicial concern, cases "between Citizens of different States." U.S. Const. art. III, § 2.

In short, there is no basis for Respondent's concerns about the effects of § 1367 upon the federal dockets. The United States itself has expressed its agreement with Petitioners' reading of the statute, and agreed that the reading does not threaten to overrun its courts with state-law cases. United States Br. in No. 04-79, at 24-26.

CONCLUSION

For these reasons, and for the reasons stated in Petitioners' opening brief, the decision below should be reversed.

Respectfully submitted,

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February 16, 2005

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101st CONGRESS
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July 26, 1990

* * * *

TITLE I—FEDERAL COURTS STUDY COMMITTEE IMPLEMENTATION

* * * *

SEC. 120. SUPPLEMENTAL JURISDICTION.

(a) GRANT OF JURISDICTION.—Chapter 85 of title 28, United States Code, is amended by adding at the end the following:

"§ 1367. Supplemental jurisdiction

"(a) IN GENERAL.—(1) In any civil action of which the district courts have original jurisdiction, including an action removed from a State court, any party or person may assert a non-Federal claim against any person or other party if—

"(A) the Federal claim in the original complaint is not insubstantial; and

"(B) the original Federal claim and the non-Federal claim arise out of the same transaction or occurrence or series of transactions or occurrences.

"(2) If the original Federal claim in a civil action is founded solely on diversity of citizenship under section 1332, the original plaintiff may assert a non-Federal claim under paragraph (1) only against the original defendant or against a party or person who has been brought into the action by a party or person other than the plaintiff, unless the action was removed from a State court.

"(b) SITUATIONS WHERE JURISDICTION MAY BE EXERCISED.—Except as provided in subsection (a)(2), the district court may exercise supplemental jurisdiction under subsection (a) even if—

"(1) the non-Federal claim is asserted against a person who is not already a party to the civil action;

"(2) the non-Federal claim is the only claim asserted against a party or a person to be brought into the civil action; or

"(3) the party or person asserting the non-Federal claim is an intervenor or an applicant for intervention.

* * * *

"(g) DEFINITIONS.—As used in this section—

"(1) the term 'Federal claim' means any claim that has an independent, statutory basis for original jurisdiction in the district courts;

"(2) the term 'non-Federal claim' means any claim that does not have an independent, statutory basis for original jurisdiction in the district courts; and

"(3) the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

* * * *

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(5)

No. 04-79

In the Supreme Court of the United States

MARIA DEL ROSARIO ORTEGA, ET AL., PETITIONERS

v.

STAR-KIST FOODS, INC.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS

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QUESTION PRESENTED

Whether, in a civil diversity action in which the claims of one plaintiff meet the amount-in-controversy threshold, 28 U.S.C. 1367 authorizes the district courts to exercise supplemental jurisdiction over the related claims of additional plaintiffs who do not satisfy the amount-in-controversy requirement.

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No. 04-79

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS

INTEREST OF THE UNITED STATES

This case concerns the proper scope of the supplemental jurisdiction statute, 28 U.S.C. 1367. The United States has a significant interest in the proper interpretation of the supplemental jurisdiction statute, and in ensuring that the statute allows for the efficient adjudication of lawsuits that satisfy the criteria for federal-court jurisdiction. In cases in which jurisdiction is properly founded on diversity of citizenship and additional plaintiffs are joined pursuant to either Federal Rule of Civil Procedure 20 (as in this case) or Federal Rule of Civil Procedure 23 (as in *Exxon Mobil Corp.* v. *Allapattah Services, Inc.*, No. 04-70), Section 1367 allows the federal district courts to exercise supplemental jurisdiction, even if the respective claims of the joined plaintiffs do not independently meet the amount-in-controversy requirement of 28 U.S.C. 1332. In keeping with Congress's dual purposes in enacting the diversity and supplemental jurisdic-

tion statutes, the United States has an interest in assuring a neutral federal forum for the adjudication of all substantial disputes between persons of diverse citizenship and promoting the efficient resolution of disputes by permitting related claims to be resolved in one action. More broadly, the rules governing the joinder of parties and claims, particularly in class actions such as *Exxon*, have enormous consequences for the federal courts and interstate commerce. The United States has previously participated as amicus curiae in cases raising similar issues to those presented in this case and in *Exxon*. See, *e.g.*, *Ford Motor Co.* v. *McCauley*, 537 U.S. 1 (2002,, *Devlin* v. *Scardelletti*, 536 U.S. 1 (2002). The United States has also previously participated in cases addressing the proper scope of the supplemental jurisdiction statute. See *Jinks* v. *Richland County*, 538 U.S. 456 (2003); *Raygor* v. *Regents of the Univ. of Minn.*, 534 U.S. 533 (2002).

STATEMENT

1. a. Under the federal diversity jurisdiction statute, 28 U.S.C. 1332, the federal district courts have jurisdiction over civil actions when two conditions are met. First, there must be diversity of citizenship. 28 U.S.C. 1332. In *Strawbridge* v. *Curtiss*, 7 U.S. (3 Cranch) 267 (1806), this Court held that the statute requires that diversity of citizenship be "complete"; *i.e.*, that no plaintiff may have the same citizenship as any defendant in the case. In the class action context, however, this Court has held that the requirement of complete diversity applies only to the named plaintiffs. See *Ben-Hur* v. *Cauble*, 255 U.S. 356 (1921).

Second, the matter in controversy must exceed a specified amount, now $75,000. 28 U.S.C. 1332. That amount-in-controversy requirement has long been understood to forbid aggregation of claims when none of the plaintiffs satisfies the jurisdictional amount. See *Zahn* v. *International Paper Co.*, 414 U.S. 291, 294-295 & nn.3 & 4 (1973) (citing cases). This Court has interpreted Section 1332 to require "that multiple

plaintiffs with separate and distinct claims must each satisfy the jurisdictional-amount requirement for suit in the federal courts." *Id.* at 294. Thus, while district courts sitting in diversity have jurisdiction over cases in which at least one of the plaintiffs presents claims exceeding $75,000, parties whose claims do not meet that jurisdictional amount must be dismissed. See *Clark* v. *Paul Gray, Inc.*, 306 U.S. 583, 590 (1939). In *Zahn*, the Court held that *Clark* applies in the class-action context as well, and thus Section 1332 does not authorize jurisdiction over a plaintiff, named or unnamed, in a Rule 23(b)(3) class action whose claim does not satisfy the amount-in-controversy requirement. See *Zahn*, 414 U.S. at 300-301.

b. The supplemental jurisdiction statute authorizes federal district courts to exercise jurisdiction over claims that would not, standing alone, come within a district court's original jurisdiction, but that are so related to claims within the court's original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. See 28 U.S.C. 1367(a). The statute was enacted as part of the Judicial Improvements Act of 1990, Pub. L. No. 101-650, 104 Stat. 5089, in response to decisions of this Court delineating the common-law doctrines of pendent and ancillary jurisdiction. See H.R. Rep. No. 734, 101st Cong., 2d Sess. 27-29 (1990); *City of Chicago* v. *International Coll. of Surgeons*, 522 U.S. 156, 165 (1997).

In *United Mine Workers of America (UMWA)* v. *Gibbs*, 383 U.S. 715 (1966), this Court held that district courts, when adjudicating federal-law claims within their subject-matter jurisdiction under 28 U.S.C. 1331, may also adjudicate state-law claims over which they would not otherwise have jurisdiction, if the federal-law and state-law claims "derive from a common nucleus of operative fact" and thus constitute "but one constitutional 'case'" under Article III. 383 U.S. at 725. Thereafter, in a series of decisions, the Court identified

various limits on a district court's ability to adjudicate claims that, although not independently within its subject-matter jurisdiction, were related to claims within its jurisdiction. See, *e.g.*, *Aldinger* v. *Howard*, 427 U.S. 1 (1976); *Owen Equip. & Erection Co.* v. *Kroger*, 437 U.S. 365 (1978).

In *Finley* v. *United States*, 490 U.S. 545 (1989), the Court held, in a suit in which original jurisdiction was based on the Federal Tort Claims Act, that the federal district courts may not exercise jurisdiction over pendent parties in the absence of congressional authorization. *Id.* at 546, 556.[1] The Court noted, however, that "[w]hatever we say regarding the scope of jurisdiction conferred by a particular statute can of course be changed by Congress." *Ibid.*

Congress responded to *Finley* by enacting 28 U.S.C. 1367, which provided express congressional authorization for both pendent-claim and pendent-party jurisdiction. See *Raygor* v. *Regents of the Univ. of Minn.*, 534 U.S. 533, 539-540 (2002). Section 1367 states, in relevant part:

> (a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.
>
> (b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this

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[1] The *Finley* Court did recognize two exceptions to its presumption against pendent-party jurisdiction, "when an additional party has a claim upon contested assets within the court's exclusive control" and "when necessary to give effect to the court's judgment." 490 U.S. at 551.

> title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

28 U.S.C. 1367(a) and (b). A district court may decline to exercise supplemental jurisdiction over a claim in various circumstances, such as when "the claim raises a novel or complex question of State law" or when the "claim substantially predominates over the claim or claims over which the district court has original jurisdiction." See 28 U.S.C. 1367(c)(1) and (2).

2. In this diversity action, petitioners Beatriz Blanco-Ortega and three of her family members assert claims against respondent Star-Kist Foods, Inc. Pet. App. 1a. All of the claims stem from an injury Beatriz allegedly suffered in opening a can of Star-Kist tuna. *Id.* at 1a, 5a. Complete diversity of citizenship is not in dispute, as petitioners are citizens of Puerto Rico and respondent is a citizen of Pennsylvania. Pet. 3-4.

The district court dismissed the case for lack of subject-matter jurisdiction. Pet. App. 46a-64a. The court concluded that there was "legal certainty" that none of petitioners' claims would be compensated in an amount exceeding $75,000, and thus none of the petitioners could satisfy the diversity statute's jurisdictional amount-in-controversy requirement. *Id.* at 58a-63a.

3. The court of appeals affirmed in part and reversed in part. Pet. App. 1a-45a. The court unanimously agreed that Beatriz's family members do not satisfy the amount-in-

controversy requirement, but it held that Beatriz does satisfy that requirement. *Id.* at 3a-10a; see *id.* at 33a (Torruella, J., concurring in part). By a divided vote, the court further held that the supplemental jurisdiction statute does not permit the district court to exercise supplemental jurisdiction over the family members' claims. *Id.* at 10a-33a.

The panel majority reasoned that, under *Clark* v. *Paul Gray, Inc.*, 306 U.S. 583 (1939), the presence of plaintiffs, including plaintiffs joined under Rule 20, that do not satisfy the amount-in-controversy requirement destroys the district court's original jurisdiction under Section 1332 to adjudicate the claims of plaintiffs that do satisfy the amount-in-controversy requirement. Pet. App. 18a, 20a-21a nn.11 & 12. Based on that premise, the court concluded that the joinder of plaintiffs with jurisdictionally insufficient claims deprives the district court of the "original jurisdiction" required by Section 1367(a) for any exercise of supplemental jurisdiction. *Id.* at 19a. In addition, after explaining that "the text of [the] statute is susceptible to two textually plausible interpretations," *id.* at 30a, the court resorted to the legislative history of Section 1367, which it construed to reveal that "Congress did not believe that § 1367 would make significant changes in the law of diversity jurisdiction." *Id.* at 31a. Accordingly, the court affirmed the order dismissing Beatriz's family members. *Id.* at 32a-33a. With respect to Beatriz's claims, the court concluded that, after the dismissal of the family members, the district court would then have original jurisdiction over her claims, and thus it vacated the order dismissing those claims and remanded to allow her to decide whether to join the claims together in the Puerto Rico courts or to proceed alone in federal court. *Id.* at 33a.

Judge Torruella dissented in part. Pet. App. 33a-45a. He explained that the presence of parties that cannot satisfy the jurisdictional amount does not undermine the district court's original jurisdiction over the claims of a party that satisfies

the jurisdictional amount. *Id.* at 40a. Thus, he concluded that the district court in this instance had "original jurisdiction" within the meaning of Section 1367(a) and that additional claims, including claims that involve the joinder of additional parties, could be brought pursuant to the terms of Section 1367(a). Judge Torruella further observed that Section 1367(b) expressly contemplates and addresses circumstances in which the district court's jurisdiction is founded solely on diversity and yet certain claims within the scope of Section 1367(a) would not independently satisfy the jurisdictional requirements of the diversity statute. *Id.* at 37a-39a, 41a-42a. He reasoned that, although Section 1367(b) excepts some claims that would otherwise satisfy the terms of Section 1367(a) (such as a claim asserted *against* a person made a party under Rule 20 of the Federal Rules of Civil Procedure), Section 1367(b) does not except claims brought *by* persons that have been joined as *plaintiffs* under Rule 20. *Id.* at 38a. Thus, Judge Torruella concluded that the district court had discretion to exercise supplemental jurisdiction over the claims of Beatriz's family members. *Id.* at 39a.

SUMMARY OF ARGUMENT

The plain text of Section 1367 resolves this case. Section 1367(a) provides a broad grant of supplemental jurisdiction to the federal courts over "all other claims" that are related to claims over which the district court has original jurisdiction. 28 U.S.C. 1367(a). Congress provided very specific exceptions to that grant of supplemental jurisdiction in the particular context of diversity cases. 28 U.S.C. 1367(b). None of those exceptions applies to claims, like those here, brought by additional plaintiffs joined pursuant to Rule 20. 28 U.S.C. 1367(b). Indeed, while Congress expressly excluded from supplemental jurisdiction under Section 1367(a) claims *against* parties joined under Rule 20 when the exercise of jurisdiction over those claims would be inconsistent with the diversity statute, see 28 U.S.C. 1367(b), it did not do

so with respect to claims *by* Rule 20 plaintiffs. Because the claims of Beatriz's family members are related to her claims (over which the district court clearly has original jurisdiction), and because none of the statutory exceptions applies to the family members' claims, the text of Section 1367 compels the conclusion that the district court may exercise supplemental jurisdiction over those claims.

In rejecting this plain reading, the panel majority engaged in a strained interpretation of the statutory language, which it based on a mistaken premise of background law. The court of appeals believed that to have the requisite "original jurisdiction" in a diversity case, the district court must have original jurisdiction over the claims of all of the parties, including those which invoke the court's supplemental jurisdiction. But "the whole point of supplemental jurisdiction is to allow the district courts to exercise pendent jurisdiction over claims as to which original jurisdiction is lacking." *City of Chicago* v. *International Coll. of Surgeons*, 522 U.S. 156, 157 (1997). The panel majority's interpretation of Section 1367 cannot be squared with the statutory text or the commonsense approach to the *supplemental* jurisdiction statute reflected in *City of Chicago*. Indeed, if the court of appeals' interpretation were correct, there would have been no need for Congress to make reference in subsection (b) to claims brought *against* parties joined under Rule 20 (or claims brought by plaintiffs joined under Rule 19). Under the court of appeals' approach, such claims would deprive the court of "original jurisdiction" under Section 1367(a), and so there would be no need for an exception in Section 1367(b). Moreover, the court below founded its reasoning on the incorrect premise that the presence of parties who do not meet the amount-in-controversy requirement destroys *ab initio* the district court's jurisdiction to decide the claims of the plaintiff who does meet the requisite jurisdictional amount.

Finally, reading the statute by its plain terms will not result in the radical departure from prior law posited by the court of appeals. Congress drew important lines in Section 1367(b) that largely protect the traditional rules of diversity jurisdiction. Furthermore, the lines drawn by Congress reflect its judgments regarding the efficiency of allowing related claims to be tried together in one action when the federal court undeniably has jurisdiction over one of the claims. This Court should read the statute according to its terms.

ARGUMENT

WHEN THE CLAIMS OF ONE PLAINTIFF IN A CIVIL DIVERSITY ACTION SATISFY THE AMOUNT-IN-CONTROVERSY REQUIREMENT, SECTION 1367 CONFERS SUPPLEMENTAL JURISDICTION OVER THE RELATED CLAIMS OF ADDITIONAL PLAINTIFFS JOINED UNDER RULE 20 WITHOUT REGARD TO THE AMOUNT IN CONTROVERSY

A. The Plain Text Of Section 1367 Provides Supplemental Jurisdiction Over Related Claims Of Plaintiffs Joined Under Rule 20 That Do Not Satisfy The Amount-In-Controversy Requirement

The task of divining the meaning of the supplemental jurisdiction statute "begins where all such inquiries must begin: with the language of the statute itself. * * * In this case it is also where the inquiry should end, for where, as here, the statute's language is plain, the sole function of the courts is to enforce it according to its terms." *United States* v. *Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989) (internal citations and quotation marks omitted); accord *Lamie* v. *United States Trustee*, 540 U.S. 526, 534 (2004); *Connecticut Nat'l Bank* v. *Germain*, 503 U.S. 249, 253-254 (1992). Here, the plain terms of Section 1367 provide supplemental jurisdiction over the claims of additional plaintiffs joined pur-

suant to Rule 20, like those of Beatriz's family members, even when those claims do not independently meet the amount-in-controversy requirement.

Section 1367(a) provides in part that:

> Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

28 U.S.C. 1367(a). It then underscores the breadth of this grant of jurisdiction, stating that "[s]uch supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties." 28 U.S.C. 1367(a). Accordingly, under the terms of the statute, the district court has supplemental jurisdiction over the claims of Beatriz's family members as long as: (1) the district court has original jurisdiction over the action, (2) the family members' claims are part of the same case or controversy, and (3) none of the statutory exceptions to supplemental jurisdiction applies. All three of those requirements are met here.

1. ***The district court had original jurisdiction over Beatriz's action***

The district court unquestionably possessed original jurisdiction, under 28 U.S.C. 1332, over Beatriz's civil action against Star-Kist. Complete diversity of citizenship is not in dispute; Beatriz is a citizen of Puerto Rico; Star-Kist is a citizen of Pennsylvania. Pet. 3-4. Likewise, there is no longer any dispute that Beatriz's claims satisfy the $75,000 amount-in-controversy requirement for diversity jurisdiction, see 28 U.S.C. 1332(a). Pet. App. 10a. Indeed, the court below recognized that Beatriz's claims were "jurisdictionally

sufficient" standing alone, *ibid.*, *i.e.*, were within the Court's "original jurisdiction" under Section 1332, and it remanded for her claims to proceed in federal court if she wished, *id.* at 33a.

The district court's jurisdiction over Beatriz's claims suffices to give it "original jurisdiction" over a "civil action" within the meaning of the supplemental jurisdiction statute, such that it may exercise supplemental jurisdiction over "all other claims" that are related to her claims. 28 U.S.C. 1367(a). That is the plain reading of the first sentence of Section 1367(a). It is also the import of this Court's decision in *City of Chicago* interpreting Section 1367.

In that case, the City of Chicago removed to federal court two state court actions that presented federal-law claims along with state-law claims over which there was no independent basis for federal jurisdiction. 522 U.S. at 160-161. The plaintiffs challenged removal of the actions, arguing in this Court that because both actions included state-law claims "that call[] for deferential judicial review of a state administrative determination," neither action "constitute[d] a 'civil action . . . of which the district courts of the United States have original jurisdiction" under the removal statute. *Id.* at 166.[2] The Court squarely rejected that argument, holding that the district court had jurisdiction over *all* of the claims because the court had "original jurisdiction" over the federal-law claims under 28 U.S.C. 1331, and "supplemental jurisdiction" over the accompanying state-law claims under 28 U.S.C. 1367. 522 U.S. at 163-167. In so holding, the Court made clear that, as long as the district court possessed original jurisdiction over *some* of the claims asserted in the case, it possessed "original jurisdiction" over the "civil action." *Id.* at 166. Accordingly, the Court reasoned, "the relevant

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[2] Although *City of Chicago* involved removal, "the propriety of removal * * * depend[ed] on whether the case originally could have been filed in federal court." 522 U.S. at 163.

inquiry" respecting the accompanying claims was "whether they fall within a district court's supplemental jurisdiction, not its original jurisdiction." *Id.* at 167. And that inquiry, the Court held, turned on whether the other claims "are so related to [the federal] claims . . . that they form part of the same case or controversy." *Ibid.* (quoting 28 U.S.C. 1367(a)).

2. *Petitioners' claims are all part of the same case or controversy*

Here, the family members' claims are indisputably related to Beatriz's claims such that "they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. 1367(a). The family members' claims derive from "a common nucleus of operative fact," *UMWA* v. *Gibbs*, 383 U.S. at 725—namely, Beatriz's alleged injury from the Star-Kist tuna can. Pet. App. 6a-10a (describing claims for past and future medical expenses for Beatriz brought by her mother and claims of emotional distress brought by her mother, sister, and father). As this Court held in *City of Chicago*, "[t]hat is all the statute requires to establish supplemental jurisdiction (barring an express statutory exception, see § 1367(a))." 522 U.S. at 165-166.

3. *The statutory exceptions are inapplicable*

None of those statutory exceptions applies here. Section 1367(b) expressly delineates the exceptions to supplemental jurisdiction in cases in which the district court's original jurisdiction, as in this case, is founded on diversity jurisdiction. Specifically, it provides in full:

> In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs *against persons* made parties under Rule 14 ["Third-

> Party Practice"], 19 ["Joinder of Persons Needed for Just Adjudication"], 20 ["Permissive Joinder of Parties"] or 24 ["Intervention"] of the Federal Rules of Civil Procedure, or over claims *by persons* proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene *as plaintiffs* under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

28 U.S.C. 1367(b) (emphasis added). The text of the statute is thus quite explicit with respect to which claims (by and against whom and under which rule) included under the terms of Section 1367(a) are nonetheless not a valid subject of supplemental jurisdiction by the terms of Section 1367(b).

Notably, and dispositively for this case, none of those exceptions applies to claims brought by parties joined *as plaintiffs* under Rule 20, the rule under which Beatriz's family members joined as plaintiffs. 28 U.S.C. 1367(b); Pet. App. 11a; see Fed. R. Civ. P. 20(a) (permitting "[a]ll persons" to "join in one action as plaintiffs if they assert any right to relief * * * in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action"). Congress's failure to except claims brought by plaintiffs joined under Rule 20 is particularly striking in light of its express exemptions for claims asserted *against* persons joined pursuant to Rule 20 and for claims brought by plaintiffs joined under Rule 19. See 28 U.S.C. 1367(b). In this circumstance, it cannot be said that Congress failed to consider the possibility of Rule 20 joinders or of claims brought by joined plaintiffs, and thus the canon *expressio unius est exclusio alterius* applies with full force. See, *e.g.*, *Barnhart* v. *Peabody Coal Co.*, 537 U.S. 149, 168 (2003) (noting that the canon applies when the "items expressed are members of an 'associated group or series,'

justifying the inference that items not mentioned were excluded by deliberate choice, not inadvertence"). Accordingly, the text of Section 1367 compels the conclusion that the district court has supplemental jurisdiction over the family members' claims.

B. The Decision Of The Court Of Appeals Is Fundamentally Flawed

The court of appeals majority nonetheless found jurisdiction lacking. Its analysis is fundamentally flawed, however, and should be rejected by this Court.

1. *The panel majority's reading of the statute cannot be squared with the statutory text and is based on an incorrect premise*

The court of appeals began its analysis with a faulty reading of the statutory text, which it based on a mistaken premise regarding the background law. The court's textual analysis hinged on the first sentence of Section 1367(a), which "specifies that supplemental jurisdiction can only apply in a 'civil action of which the district courts have original jurisdiction.'" Pet. App. 17a (quoting 28 U.S.C. 1367(a)). The court believed that a district court has "original jurisdiction" over a diversity action only when it has jurisdiction over the claims of *all* the plaintiffs in the case, including the claims of plaintiffs seeking to invoke the district court's supplemental jurisdiction. *Id.* at 18a-19a. The court then concluded that the district court did not have the requisite "original jurisdiction" in this case because it believed that the presence of plaintiffs whose claims do not satisfy the amount-in-controversy requirement destroyed the original jurisdiction of the district court to adjudicate a different plaintiff's claims that do satisfy the jurisdictional amount. *Ibid.* The court of appeals was incorrect.

a. By reading the first sentence of Section 1367(a) as requiring the district court to have "original jurisdiction"

over the claims of all the plaintiffs, the court of appeals improperly collapsed the original jurisdiction inquiry into the supplemental jurisdiction inquiry. As discussed above, this Court corrected that very mistake in *City of Chicago*. There, the parties objecting to federal jurisdiction asserted that the district court had to have "original jurisdiction" not simply over the federal claims, but over the state-law claims as well. 522 U.S. at 166-167. As this Court observed, that "would effectively read the supplemental jurisdiction statute out of the books: The whole point of supplemental jurisdiction is to allow the district courts to exercise pendent jurisdiction over claims as to which original jurisdiction is lacking." *Id.* at 167. Similarly, here, "if each and every plaintiff in a diversity case must satisfy § 1332's requirements of complete 'diversity' and 'matter in controversy,' * * * then there remains no supplemental jurisdiction in a diversity action for district courts to exercise." *Rosmer* v. *Pfizer, Inc.*, 263 F.3d 110, 120 (4th Cir. 2001), cert. denied, 536 U.S. 979 (2002).

The flaw in the court of appeals' reading of the statute is underscored by the remainder of the first sentence of Section 1367, which provides that supplemental jurisdiction can be exercised over "*other* claims." 28 U.S.C. 1367(a) (emphasis added). That clause makes clear that the claims over which supplemental jurisdiction is to be exercised need not be within the district court's "original jurisdiction," and that the requirement of having original jurisdiction over a civil action is satisfied as long as any claim falls within the court's original jurisdiction. 28 U.S.C. 1367(a). As Judge Wilkinson observed, reading "'original jurisdiction' over a 'civil action' [to] mean[] that the district court must have original jurisdiction over the *entire* action at the initiation of the complaint," as the panel majority did here, "would render the phrase 'over all other claims that are so related to claims in the action within such original jurisdiction' virtually super-

fluous." *Rosmer*, 263 F.3d at 116 (quoting 28 U.S.C. 1367(a)). Indeed, the very existence of the exceptions in Section 1367(b), which exclude certain claims that would otherwise fall within the scope of Section 1367(a) and only apply to cases in which jurisdiction is "founded solely on section 1332," indicates that Congress clearly intended supplemental jurisdiction to extend to "other claims" in diversity suits. Both Section 1367(b) and Section 1367(a) envision supplemental jurisdiction over claims not covered by Section 1367(b)'s express exceptions (like those here) even if, in the absence of Section 1367(a), the exercise of supplemental jurisdiction over such claims "would be inconsistent with the jurisdictional requirements of section 1332." 28 U.S.C. 1367(b).

If Congress had actually intended to exclude supplemental jurisdiction in any diversity case in which it would be inconsistent with the diversity statute (*i.e.*, in any case in which *supplemental*, as opposed to original jurisdiction could be relevant), as the court of appeals believed, there would have been no need to parse through the various joinder mechanisms and devise the carefully reticulated and differentiated scheme of exclusions set forth in Section 1367(b). In fact, under the court of appeals' reasoning, Congress could have dispensed with subsection (b) altogether, and certainly could have omitted all the text that specifies which claims otherwise included in subsection (a) are excepted.

In other words, "the structure of this statute * * * makes its meaning unambiguous." *Olden* v. *LaFarge Corp.*, 383 F.3d 495, 504 (6th Cir. 2004). As discussed above, Section 1367(a) provides a broad grant of supplemental jurisdiction "over all claims not excluded by the second part," and subsection (b) then specifically details those exclusions. *Ibid.* "Given this structure, it defies logic to suggest that the inclusive section of the statute, containing the sweeping grant of supplemental jurisdiction, also contains a completely

unspoken, yet critically important, exclusion." *Ibid.* Yet that is the necessary result of the panel majority's analysis.

Even on its own terms, moreover, the panel majority's interpretation fails. As its remand order underscores, under the court of appeals' view, a district court lacks "original jurisdiction" over an action in which only some of the plaintiffs satisfy the amount-in-controversy requirement, but it has "original jurisdiction" over an action in which all the initially pled plaintiffs satisfy that requirement. In the latter case, however, Section 1367 clearly seems to allow the plaintiffs to add new plaintiffs under Rule 20 whose claims do not meet the amount-in-controversy requirement. The statute expressly allows supplemental jurisdiction over "claims that involve the joinder * * * of additional parties." 28 U.S.C. 1367(a). Although the panel majority states that such plaintiffs could not join the suit after filing (or presumably after remand here), Pet. App. 23a-24a & n.14, that proposition appears to expose just how strained the court's reading of "original jurisdiction" is. Carried to its logical end, the court's approach would mean that a district court is deprived of "original jurisdiction" over a case merely by the filing of a motion to amend the complaint to add new plaintiffs whose claims do not satisfy the jurisdictional amount requirement. Not surprisingly, the court of appeals cites no authority for that extraordinary proposition.

b. At bottom, the court of appeals' reasoning flowed from an incorrect premise: that the presence of plaintiffs whose claims do not meet the amount-in-controversy requirement destroys "original jurisdiction" to adjudicate the claims of parties that do satisfy the jurisdictional amount.

To be sure, this Court has stated that "[t]he presence of [a] *nondiverse* party automatically destroys original jurisdiction." Pet. App. 18a (quoting *Wisconsin Dep't of Corr.* v.

Schacht, 524 U.S. 381, 389 (1998)) (emphasis added).[3] But the presence of a plaintiff whose claim fails to meet the amount-in-controversy requirement does *not* destroy jurisdiction over the entire action. That has been clear at least since this Court's decision in *Clark* v. *Paul Gray, Inc.*, 306 U.S. 583 (1939). In *Clark*, this Court reached the merits of the claim of the party that satisfied the jurisdictional amount, even before the parties that failed to satisfy the jurisdictional amount were dismissed. As this Court explained in *Zahn* v. *International Paper Corp.*, 414 U.S. 291 (1973): "Upon ascertaining on its own motion that only one of the plaintiffs in the District Court had presented a claim satisfying the jurisdictional amount, the Court [in *Clark*] reached the merits of that claim but directed the District Court to dismiss the claims of all other plaintiffs for want of jurisdiction." *Id.* at 295-296. While *Clark* required "dismissal of those litigants whose claims do not satisfy the jurisdictional amount," *id.* at 295, the presence of such parties does not affect a court's jurisdiction to adjudicate the claims of other parties whose claims do satisfy the jurisdictional amount.

The court of appeals was therefore mistaken in concluding that "as long as the offending parties are present, original jurisdiction over the 'civil action' cannot exist." Pet. App. 20a-21a n.12. Instead, Beatriz's claims were not meaningfully distinguishable from the federal-law claims in *City of Chicago*. Just as "[t]hose federal claims suffice[d] to make the actions 'civil actions' within the 'original jurisdiction' of the district courts" despite the existence of the accompanying state-law claims, 522 U.S. at 166, so too did Beatriz's

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[3] In situations involving a dispensable nondiverse party, a court may correct the jurisdictional defect nunc pro tunc by dismissing the nondiverse party, and thereby exercise jurisdiction over the remainder of the suit. See, *e.g.*, *Newman-Green, Inc.* v. *Alfonzo-Larrain*, 490 U.S. 826, 835-836 (1989).

diversity claims suffice to establish the district court's original jurisdiction over this action. Indeed, the court below made the same error as the court of appeals in *City of Chicago*, by concluding that original jurisdiction was lacking even though it acknowledged that some of the claims, standing alone, would be within the district court's original jurisdiction. Pet. App. 10a, 33a. As Judge Torruella noted in dissent, "[o]n remand, it will be undisputed that Beatriz's claims constitute 'a civil action of which the district courts have original jurisdiction.'" *Id.* at 40a-41a (quoting 28 U.S.C. 1367(a)). That is all that the first sentence of Section 1367(a) requires, and the district court's original jurisdiction over Beatriz's claims provides the requisite predicate for its exercise of supplemental jurisdiction over her family members' claims.

2. *The panel majority's resort to legislative history cannot overcome the plain meaning of the text*

Given the plain language of Section 1367, the panel majority erred in resorting to the statute's concededly "muddled" legislative history. Pet. App. 30a-32a. As this Court has recognized, "reference to legislative history is inappropriate when the text of the statute is unambiguous." *Department of Hous. & Urban Dev.* v. *Rucker*, 535 U.S. 125, 132 (2002); see *BedRoc Ltd.* v. *United States*, 124 S. Ct. 1587, 1595 & n.8 (2004).

In any event, the passage from the committee report emphasized by the majority adds nothing to—and in fact rejects—the plain import of Section 1367's text. That passage reads as follows:

> [Section 1367] would authorize jurisdiction in a case like *Finley* [v. *United States*, 490 U.S. 545 (1989)] as well as essentially restore the pre-*Finley* understandings of the authorization for and limits on other forms of supplemental jurisdiction. * * * In diversity cases, the district

> courts may exercise supplemental jurisdiction, except when doing so would be inconsistent with the jurisdictional requirements of the diversity statute.

H.R. Rep. No. 734, 101st Cong., 2d Sess. 28 (1990). The court below reasoned that the statement that supplemental jurisdiction will be available "except when doing so would be inconsistent with the jurisdictional requirements of the diversity statute" indicates that Congress did not intend to authorize federal courts to exercise supplemental jurisdiction over the claim of a party that does not independently meet the jurisdictional prerequisites of Section 1332. Pet. App. 31a.

That reading of the committee report is impossible to reconcile with the statutory text for the reasons already discussed. It would render the notion of *supplemental* jurisdiction in diversity cases a dead letter. Further, it would render the specifically delineated exceptions set forth in the body of subsection (b) superfluous, in violation of "the settled rule that a statute must, if possible, be construed in such fashion that every word has some operative effect." *United States* v. *Nordic Vill. Inc.*, 503 U.S. 30, 36 (1992). The plain text of Section 1367 forbids inconsistency with the requirements of the diversity statute only in the instances expressly set forth, not in all cases. And it is the text of the statute, not the ambiguous general statement in the committee report, that controls here. See *City of Chicago* v. *Environmental Defense Fund*, 511 U.S. 328, 337 (1994) ("[I]t is the statute, and not the Committee Report, which is the authoritative expression of the law[.]"); see also *BedRoc Ltd.*, 124 S. Ct. at 1595 n.8 (refusing to "presume that Congress expressed itself in a single House Committee Report rather than in the unambiguous statutory text approved by both Houses and signed by the President"). Certainly, the mistake this Court corrected in *City of Chicago* (*i.e.*, ignoring that supplemental jurisdiction does, in fact, supplement the

court's original jurisdiction) is no less a mistake because it is reflected in a committee report.

The court of appeals also referenced statements from the bill's sponsor to the effect that the supplemental jurisdiction provisions did not work major changes in existing law, and the court observed that committee hearings on the bill lasted only one day. Pet. App. 31a. The court believed that those isolated remarks and the cursory congressional treatment given Section 1367 demonstrate that Congress did not intend—regardless of the language of the text on which the members actually voted—to authorize supplemental jurisdiction over claims by plaintiffs joined under Rule 20 that do not independently satisfy the amount-in-controversy requirement of Section 1332. But even if such an intent were manifest in the legislative history, it could not overcome the plain language of Section 1367. See, *e.g.*, *United Food & Commercial Workers Union Local 751* v. *Brown Group, Inc.*, 517 U.S. 544, 550 (1996) ("[T]he more natural reading of the statute's text, which would give effect to all of its provisions, always prevails over a mere suggestion to disregard or ignore duly enacted law as legislative oversight."). As the Ninth Circuit observed with respect to this same legislative history, "If courts could ignore the plain meaning of statutory texts because their legislative histories showed that some (or even many) of those who drafted and voted for the texts did not understand what they were doing, the plain meaning of many statutes, not only § 1367, would be in jeopardy." *Gibson* v. *Chrysler Corp.*, 261 F.3d 927, 940 (9th Cir. 2001), cert. denied, 534 U.S. 1104 (2002).[4]

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[4] As one commentator has observed, "[o]ne inescapable conclusion" from the legislative history of Section 1367(b) "is the general absence of congressional concern over the impact and merits of this statute." Christopher M. Fairman, *Abdication to Academia: The Case of the Supplemental Jurisdiction Statute, 28 U.S.C. § 1367*, 19 Seton Hall Legis. J. 157, 172 (1994).

C. Exercising Supplemental Jurisdiction Here Will Further Congress's Purposes Without Effecting The Radical Departure From Prior Law Posited By The Court Of Appeals

Although the grant of supplemental jurisdiction in Section 1367(a) is broad, Congress drew important lines in subsections (b) and (c) that limit that jurisdiction, especially in cases founded solely on diversity jurisdiction. See 28 U.S.C. 1367(b) and (c). As explained below, those lines reflect Congress's policy judgments and address many of the fears expressed by the panel majority. And, as the Court observed in *Finley*, if Congress decides that the plain import of the statutory text is inconsistent with its policy preferences, "the scope of jurisdiction conferred * * * can of course be changed by Congress." *Finley*, 490 U.S. at 556.

1. *Applying the statute by its terms does not result in the radical consequences feared by the court of appeals*

Reading the statute in accordance with its plain language will not result in the "surprising and far-reaching consequences" feared by the court of appeals. Pet. App. 27a. The majority expressed concern that allowing supplemental jurisdiction here would not only overrule *Clark*'s holding that each plaintiff's claims must satisfy the amount-in-controversy requirement, but would "overturn[]" the complete diversity requirement established in *Strawbridge*, because a "plain reading" interpretation of the statute would allow the joinder of nondiverse parties. *Ibid.* Those concerns are not well-founded.

In the first place, it is far from clear that the plain-language interpretation of Section 1367 would affect the rule announced in *Strawbridge* at all. There is a crucial distinction between the complete diversity requirement and the amount-in-controversy requirement, in that the former necessarily applies to the case as a whole, whereas the latter

applies on a plaintiff-by-plaintiff basis, *i.e.*, there is no "complete amount-in-controversy" requirement. When complete diversity is lacking, a district court lacks original jurisdiction over all aspects of the case, but the inability of one plaintiff to meet the amount-in-controversy requirement does nothing to affect the court's jurisdiction over the claims of a coplaintiff who does satisfy that requirement.[5] Accordingly, while the issue is not presented here, the Court might well conclude in an appropriate case that the complete diversity requirement survived the enactment of Section 1367, because the joinder of a nondiverse party (unlike the joinder of a party whose claims fall below the jurisdictional amount) destroys the court's original jurisdiction over the case *as a whole*.

In any event, even if Section 1367 were construed to authorize joinder of nondiverse parties, it would not make major inroads into *Strawbridge*. As Judge Easterbrook explained, Section 1367(b) draws important lines with respect to protecting the complete-diversity rule. See *Stromberg Metal Works, Inc.* v. *Press Mech., Inc.*, 77 F.3d 928, 932 (7th Cir. 1996). For example, even assuming arguendo that Section 1367(b) might allow claims *by* parties joined under Rule 20 to proceed without regard to diversity of citizenship,

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[5] To be sure, as noted above (note 3, *supra*), the jurisdictional defect created by the joinder of nondiverse parties can in some circumstances be corrected nunc pro tunc so as to preserve the court's ability to resolve the claims of diverse parties. That does not change the fact, however, that the court lacks original jurisdiction over *any* aspect of the case in the absence of such a correction. See *Newman-Green*, 490 U.S. at 827, 836-837 (holding that appellate courts had the authority to dismiss dispensable, nondiverse parties "whose presence spoils statutory diversity jurisdiction" so that the merits of the claims relating to the diverse parties could be decided on appeal); see also *id.* at 840 (Kennedy, J., dissenting) (describing the dismissal of a nondiverse party as "creating jurisdiction where none existed before"). The same is not true when some but not all of the plaintiffs merely fail to satisfy the amount-in-controversy requirement. See pp. 17-18, *supra* (discussing *Clark*).

claims *against* nondiverse persons made parties under Rule 20 are expressly forbidden. See *ibid.* Thus, the supplemental jurisdiction statute would not allow a citizen of Illinois to sue a citizen of Indiana under the diversity statute and then add a citizen of Illinois as a supplemental defendant. See *ibid.* Likewise, other exceptions in subsection (b) prevent the use of supplemental jurisdiction with respect to nondiverse, indispensable parties—whether plaintiffs or defendants—because subsection (b) does not allow claims *by* or *against* persons who join as necessary parties under Rule 19 or who intervene pursuant to Rule 24 when the joinder would be inconsistent with the requirements of the diversity statute. See 28 U.S.C. 1367(b).[6] "As written, § 1367(b) keeps cases of this kind out of federal court entirely, just as *Strawbridge* does." *Stromberg*, 77 F.3d at 932. Although, as Judge Easterbrook observed, *ibid.*, the wisdom of those lines has been subject to extensive debate, there is no basis for a court to disregard them.

Thus, even if applying the lines drawn by Congress would erode the rule of *Strawbridge* in part, there would be no cause for concern. In the Rule 20 context, the result would simply be that a federal forum would be provided to plaintiffs and defendants in certain instances in which there is minimal rather than complete diversity, due to the joinder of one or more nondiverse plaintiffs. That same result already occurs on a much broader scale in the class action context, in which it has long been the law that unnamed plaintiffs may join the action as class members regardless of their diversity of citizenship. See *Ben-Hur* v. *Cauble*, 255 U.S. 356, 365-367 (1921).

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[6] Those exceptions protect the complete diversity rule in the context in which this Court has suggested it cannot even be corrected nunc pro tunc, namely, with respect to claims by or against indispensable parties. Cf. note 3, *supra*; *Horn* v. *Lockhart*, 84 U.S. (17 Wall.) 570, 579 (1873).

To be sure, allowing supplemental jurisdiction here, when the additional plaintiffs do not meet the amount-in-controversy requirement, does allow federal jurisdiction in instances in which the rule of *Clark* would not, at least with respect to claims brought by plaintiffs joined pursuant to Rule 20. But just as the rule of *Strawbridge* is preserved for all of the instances covered by the subsection (b) exceptions, so too is the rule of *Clark*. As a leading treatise has observed, Section 1367's "extension of supplemental jurisdiction is severely limited in certain diversity cases by subsection (b)," 16 James Wm. Moore, *Moore's Federal Practice* § 106.05[2], at 106-24 (3d ed. 2004) (*Moore's*), and, "[i]n most instances, the statute mirrors prestatutory common law practice," *id.* § 106.40, at 106-55.

Furthermore, construing Section 1367 in this manner would not burden federal district courts with claims that, in the judgment of the district court, ought to be decided elsewhere. Even if the requirements for supplemental jurisdiction are satisfied, Section 1367 expressly provides district courts with discretion to decline to exercise that jurisdiction. 28 U.S.C. 1367(c); see 16 *Moore's* § 106.05[4], at 106-27 ("Subsection (c) of Section 1367 codifies the discretionary factors that justify a refusal to exercise supplemental jurisdiction."). That discretion will protect federal courts from having to resolve claims that raise "novel or complex issue[s] of State law" or claims that "substantially predominate[]" over the original jurisdiction claims. 28 U.S.C. 1367(c). A district court also can decline to exercise supplemental jurisdiction if it has dismissed the claims over which it has original jurisdiction. 28 U.S.C. 1367(c). Finally, "in exceptional circumstances," a court can decline to exercise its supplemental jurisdiction if "there are other compelling reasons" for doing so. 28 U.S.C. 1367(c). As this Court recognized in *City of Chicago*, "[t]he statute thereby reflects the understanding that, when deciding whether to exercise supplemental

jurisdiction, a federal court should consider and weigh in each case, and at every stage of the litigation, the values of judicial economy, convenience, fairness, and comity." 522 U.S. at 173 (internal citation and quotation marks omitted). Thus, Section 1367 provides ample means by which federal district courts can manage their dockets and decline to adjudicate matters most appropriately left to the state courts.

2. *Affording supplemental jurisdiction here serves the congressional purposes of fostering the efficient resolution of disputes and of providing a neutral federal forum to resolve substantial controversies*

As Judge Torruella observed, under the decision below, "the plaintiffs in this case must either (1) pursue Beatriz's claims in federal court and her family's claims in state court, (2) dispose of her family's claims altogether, or (3) pursue all of the claims in state court." Pet. App. 44a. "The first option leads to a waste of judicial resources and a potential for inconsistent verdicts. The second option deprives Beatriz's family of their day in court. The third option * * * deprives Beatriz of a federal forum and of her right to a trial by jury, as her case would not receive a jury trial in the Commonwealth courts." *Ibid.* The statute should not lightly be read to require such a result, particularly when Congress drew specific lines in the text reflecting the situations in which it has determined that the efficiency of exercising supplemental jurisdiction outweighs the interest in ensuring that each plaintiff meets the amount-in-controversy requirement. See 28 U.S.C. 1367(b). Rather, Section 1367 should be read—as its plain text dictates—to allow supplemental jurisdiction over claims of additional Rule 20 plaintiffs whose claims do not satisfy the amount-in-controversy requirement for diversity jurisdiction, an interpretation that will further

the congressional purposes underlying both this statute and the diversity jurisdiction statute more generally.

First, allowing the joinder under Rule 20 of the related claims of additional plaintiffs promotes the efficient resolution of disputes, both for parties and for the federal and state court systems. It is uncontested that such efficiency interests motivated Section 1367. As Judge Torruella noted, Pet. App. 44a, it was those interests that prompted Congress's desire to amend the statute in light of this Court's decision in *Finley*, which held that a plaintiff suing the United States under the Federal Tort Claims Act could not, absent statutory authorization, join related state-law claims against additional defendants. Those efficiency benefits are extolled in the legislative history of Section 1367. As the House Report noted, "[s]upplemental jurisdiction has enabled federal courts and litigants to take advantage of the federal procedural rules on claim and party joinder to deal economically —in single rather than multiple litigation—with related matters, usually those arising from the same transaction, occurrence, or series of transactions or occurrences." H.R. Rep. No. 734, *supra*, at 28; *ibid.* ("[T]he district court's exercise of supplemental jurisdiction, by making federal court a practical arena for the resolution of an entire controversy, has effectuated Congress's intent in the jurisdictional statutes to provide plaintiffs with a federal forum for litigating claims within original federal jurisdiction.").[7]

Second, allowing supplemental jurisdiction over the related claims of plaintiffs joined pursuant to Rule 20 is not inconsistent with the general purpose of diversity jurisdic-

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[7] Accord *Report to the Federal Courts Study Committee of the Subcommittee on the Role of Federal Courts and Their Relation to the States* (Mar. 12, 1990), *reprinted in* 1 *Federal Courts Study Committee, Working Papers and Subcommittee Reports* 547 (July 1, 1990) ("Supplemental jurisdiction facilitates the joinder in litigation of all claims arising out of the same transaction. The benefits in judicial economy and in party and witness convenience are apparent.").

tion. The purpose of the diversity jurisdiction statute, including its amount-in-controversy requirement, is to provide a neutral federal forum for the adjudication of substantial controversies involving diverse parties. Congress included the amount-in-controversy requirement in the original diversity jurisdiction statute, and subsequently adjusted the amount, to reserve the federal courts' diversity jurisdiction for relatively substantial cases in monetary terms. See 15 *Moore's* § 102.109[3], at 102-199 ("[T]he jurisdictional-amount requirement reflects a congressional judgment that federal judicial resources should be devoted only to those diversity cases in which the financial stakes rise to a predetermined level."). Because original jurisdiction over at least one plaintiff's claims is a prerequisite to the exercise of supplemental jurisdiction, every diversity case in which supplemental jurisdiction is exercised over a Rule 20 plaintiff will necessarily entail a substantial controversy. The joinder of another plaintiff with injuries from the same transaction or occurrence only enhances, rather than detracts from, the significance of the controversy. The supplemental jurisdiction statute will simply allow a neutral federal forum for adjudication of additional claims that are part and parcel of that substantial controversy. See *Stromberg*, 77 F.3d at 932 (noting that the statute's "closely related" requirement is a "vital qualification"). That result creates no cause for concern, and provides no possible justification for overriding the plain text of the statute.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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